



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes MT, OPR, CNR, MNR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought more time to apply to cancel a notice to end tenancy; to cancel a notice to end tenancy; and for a monetary order for emergency repairs.

The applications were originally set up as two separate hearings, one scheduled for 9:30 am March 23, 2011 (the tenant's application) and the other at 11:00 am March 23, 2011 (the landlord's application). In both applications the same tenant and dispute address were named but a different landlord was named on the separate applications.

The tenant testified that he served the landlord with notice of the hearing for his application via registered mail but at the time of the hearing was not able to recall the tracking number. I ordered the tenant to provide his receipt via fax immediately following this hearing, the tenant complied and provided confirmation that he served the landlord in accordance with the *Residential Tenancy Act (Act)* for the purposes of this hearing.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act*.

In addition it must be decided if the tenant is entitled to more time to apply for dispute resolution to cancel a notice to end tenancy; to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; and to a monetary order for emergency repairs, pursuant to Sections 33, 46, 66, 67, and 72 of the *Act*.

### Background and Evidence

The tenant testified that he entered into a tenancy agreement with the landlord named in his Application for Dispute for a tenancy that began on June 1, 2010 for a month to month tenancy for a monthly rent of \$400.00 due on the 1<sup>st</sup> of each month and that he had paid a security deposit of \$200.00.

The landlord's agent testified that the landlord was currently out of the country and that sometime in mid January 2011 the landlord introduced the agent to the tenant and told the tenant that the agent would be collecting rent while the landlord was away.

The tenant testified that he was aware the landlord was out of the country but had never been introduced to the agent until the agent appeared at his door trying to collect rent. He stated that the landlord told him to hold off on the rent until he returned and they would settle their accounts at that time.

He further stated that he later received the 10 Day Notice to End Tenancy and when it listed the landlord as someone he had never heard of, he tried to contact his landlord but that his landlord did not provide any additional contact information than that he already had for the landlord, locally.

The agent testified that he had tried to collect rent by dropping by the rental unit and that the tenant was never there, the agent understood this was the usual practice for the landlord to pick up the rent from the tenant at the dispute address. When he could not get a hold of the tenant he issued the 10 Day Notice by posting it on the door to the rental unit.

The 10 Day Notice to End Tenancy lists the agent as the landlord and was issued on February 14, 2011 with an effective date of February 24, 2011. The landlord noted on the notice that it was served by posting it on the door. The notice indicates the tenant failed to pay rent that was due on February 1, 2011 in the amount of \$500.00.

The tenant testified that he does not owe any rent for January 2011 as he had paid his rent to the landlord but that the landlord later loaned him \$100.00 and was seeking the return of that loan. The landlord's agent could provide no testimony on this matter.

The tenant also testified that as a result of leaks in the roof of the rental unit he began having electrical problems and being unable to contact the landlord he hired an electrician to complete some electrical repairs and has submitted an invoice for \$1,145.95 confirming the tenant paid the electrician \$500.00 and has a balance of \$645.95.

### Analysis

As the 10 Day Notice was issued by the agent on February 14, 2011 by posting it to the tenant's door the Act deems the notice as received by the tenant no earlier than February 17, 2011 allowing the tenant up to February 22, 2011 to file his Application. The tenant filed his application on February 23, 2011.

I find, as a result of extraordinary circumstances and since his application was filed prior to the effective date of the notice, the tenant is entitled to additional time to submit his Application for Dispute Resolution.

I find that the landlord failed to inform the tenant adequately, in writing, of any changes to the tenancy agreement, including who to pay rent to and how and he failed to provide the tenant with an emergency contact name and number during his absence from the country.

In the absence of any documentation from the agent as to his authority to act on the landlord's behalf I find the landlord has failed to establish the party listed as landlord on both the landlord's Application for Dispute Resolution and the 10 Notice to End Tenancy has the authority to act on the landlord's behalf.

Further, in the absence of any contrary testimony from the landlord or an agent of the landlord disputing the tenant's testimony that the amount owed to the landlord for January 2011 results from a loan rather than rent, I accept the tenant's testimony and I find that the \$100.00 is not rent due in January 2011.

As a result of the above findings, I find the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 14, 2011 to be of no force and effect. In addition, as the landlord has provided no evidence to confirm that he has appointed an agent I find the landlord has failed to establish the agent who submitted the Application for Dispute Resolution had the authority to do so.

I also accept the tenant's testimony, in the absence of any testimony from the landlord or an agent, that the tenant required emergency repairs to the electrical service of the rental unit and as the landlord had failed to provide emergency contact information while he is out of the country, I find the tenant had no choice but to have the repairs completed at his own expense.

However, Section 33 of the *Act* requires the tenant to provide the landlord an opportunity to reimburse the tenant and a written account of the emergency repairs accompanied by a receipt for each amount claimed. As the landlord is out of the country and the tenant has not provided the landlord with the required request and written account of the repairs and receipts, I find the tenant's application to be premature.

Conclusion

Based on the above, I grant that the tenant is entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on February 14, 2011 and subsequently dismiss the landlord's Application for an order of possession based on that Notice.

As I have determined the tenant's Application for compensation for emergency repairs is premature I dismiss this portion of the tenant's Application with leave to reapply.

As I have found the person who submitted the Application does not have the authority to submit an application on the landlord's behalf, I dismiss this portion of the landlord's Application with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 24, 2011.

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Residential Tenancy Branch