



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNR, OLC

### Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a Notice to End Tenancy and to order the landlord to comply with the Act, regulation, or tenancy agreement.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of a notice to end tenancy?

Is the tenant entitled to an order for the landlord to comply with the Act, regulation, or tenancy agreement?

### Background and Evidence

The rental unit consists of a portion of a basement suite in a single detached home. Pursuant to a written agreement, the month to month tenancy started in April 2006. The monthly rent is \$300.00 and is payable on the first of each month.

The landlord testified that the tenant is consistently late paying rent. He stated that to date the tenant is \$1200.00 in arrears. The landlord said that the tenant has a pattern of catching up and then falling behind.

The tenant testified that although he was late by 8 days, he had the rent money available for the landlord on the day the landlord served him the 10 Day Notice to End Tenancy on February 22<sup>nd</sup>, 2011. He stated that the landlord refused to accept the money, which has prompted this matter to be resolved by way of dispute resolution. The tenant argued that the amount owed to the landlord is \$1050.00.

The landlord provided no documentary evidence, such as receipts to support the amount owed. He did however agree that he refused to accept any more rent payments from the tenant, and that he simply wants to end the tenancy.

### Analysis

There was no dispute that the tenant offered to pay the landlord on the date he was served with the 10 Day Notice to End Tenancy. The focus of the landlord's testimony and his reason for ending the tenancy addressed the tenant's continual late payments rather than unpaid rent.

The burden of proof was on the landlord to justify the grounds to issue a 10 Day Notice to End Tenancy, pursuant to Section 46 of the *Residential Tenancy Act*. I am not satisfied on the balance of probabilities that the landlord's evidence satisfied the provisions of this section. The tenant did not dispute that he has been late in paying rent, and that he could have paid the landlord in full. The parties disputed the amount owed; however it was not the subject of this application and there was insufficient evidence to establish the exact amount.

I find insufficient evidence to conclude that the landlord had grounds to issue a 10 Day Notice to End Tenancy. Section 47 of the Act provides in part that where a tenant is repeatedly late paying rent, the proper notice is a 1 Month Notice to End Tenancy, and that the notice must be completed in an approved form.

The tenant presented no evidence concerning his request for the landlord to comply with the Act, regulation, or tenancy agreement.

Conclusion

I find the 10 Day Notice to End Tenancy of no effect and the tenancy will continue.

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 11, 2011.

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Residential Tenancy Branch