



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SECCIA BROS.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

This hearing dealt with a tenant's application to dispute a 10 Day Notice(s) to End Tenancy for Unpaid Rent and a request for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The tenant stated that he delivered evidence to the Residential Tenancy Branch the day before this hearing. The evidence was not before me as it had been delivered long after the deadline for serving evidence provided in the Rules of Procedure. As such, I did not review or consider the tenant's late-served evidence but did permit the tenant to describe the content of the documentation orally during the hearing.

### Issue(s) to be Decided

1. Should the 10 Day Notice(s) to End Tenancy be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Did the tenant establish an entitlement to receive compensation from the landlord?

### Background and Evidence

The tenant is required to pay rent of \$810.00 on the 1<sup>st</sup> day of every month and \$100.00 for four parking spaces. On December 4, 2013 the landlord's agent issued a 10 Day Notice to End Tenancy for Unpaid Rent indicating the tenant failed to pay rent of \$910.00 that was due on December 1, 2013. The agent served it upon the tenant in person and mailed it to the tenant via registered mail on December 4, 2013. The tenant received the registered mail on December 9, 2013 as evidenced by the Canada Post tracking information. The tenant confirmed that the 10 Day Notices he received were

double sided and included information for tenants on the reserve side. On December 9, 2013 the tenant filed to dispute the 10 Day Notice(s).

On December 11, 2013 the tenant presented the landlord with \$120.00 in cash and a cheque for \$790.00. The cheque was returned for insufficient funds as evidenced by the bank's notice to the landlord dated December 16, 2013. In the few days that followed the tenant brought \$790.00 in cash to the landlord's agent. The tenant also paid \$910.00 to the landlord's agent for the month of January 2014. The tenant testified that the agent accepted the payment but communicated to the tenant that the eviction would still proceed.

The tenant was of the position his tenancy should continue since he has paid rent for December 2013 and January 2014.

The landlord submitted that the tenancy should end and the landlord requested an Order of Possession. The landlord had provided copy of the 10 Day Notice sent to the tenant via registered mail, along with a covering letter written by the landlord's agent; and, the registered mail receipt. The landlord also provided copies of deposit slips and returned cheques written by the tenant.

The tenant also requested monetary compensation of \$400.00 in filing this application. In the details of dispute the tenant indicated that he had been harassed by the landlord's agent three times in two days. He also asserted that he suffered losses with respect to damage to his personal vehicles while parked in the underground parking and that there is a hole in his balcony.

During the hearing, the tenant submitted that after receiving the 10 Day Notice in person the agent asked for payment of the rent three times and that the damage to his vehicle was the result of lime leaching through the concrete above his vehicle.

The submitted that ICBC has inspected the vehicle damage and submitted letters written by the agent instructing the tenant to park his vehicles in another space. The landlord has budgeted for balcony repairs to be done this year.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

As provided in the Act, and stated on the 10 Day Notice, when a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

I accept the undisputed testimony of the parties and the documentary evidence provided to me that the tenant received two 10 Day Notices with respect to unpaid rent for December 2013 with the last one being received via registered mail on December 9, 2013.

Since the tenant last received a 10 Day Notice on December 9, 2013 I find the tenant had until December 14, 2013 to pay the rent to nullify the Notice. I find the tenant failed to pay rent within five days since the cheque presented to the landlord on December 11, 2013 was dishonoured and replacement funds were not provided until after December 16, 2013. Therefore, I find the Notice was not nullified by payment within five days of receiving the last 10 Day Notice.

As I have found that the 10 Day Notice was not nullified, as explained above, I proceed to consider whether the tenant has presented a legal basis for me to cancel the Notice. Under section 26 of the Act, a tenant is required to pay rent, even if the landlord has violated the Act, regulations or tenancy agreement; unless, the tenant has a legal right under the Act to withhold rent. A legal right to withhold rent is permitted under the Act in very limited and specific circumstances. Allegations of harassment, damage to personal property, or unresolved repair issues, in themselves are not basis to withhold rent. Rather, if a tenant feels entitled to be compensated for the landlord's violations the tenant must either obtain the landlord's consent for deductions from rent or the prior authorization of an Arbitrator (as the delegated authority of the Director) with the Residential Tenancy Branch. In this case, the tenant did not have the authority of the landlord or an Arbitrator to withhold rent that was due on December 1, 2013. Nor, do I find the tenant presented any other basis under the Act to withhold rent. Therefore, I find there is no reason under the Act to cancel the 10 Day Notice and the tenant's request to do so is dismissed.

I did not that the effective date stated on the 10 Day Notice is incorrect, meaning the effective date automatically changes to comply with the Act under section 53. Therefore, the effective date is changed to read December 19, 2013.

With respect to payments received after the effective date of the 10 Day Notice, I am satisfied by the tenant's own testimony that the landlord' agent effectively communicated to him that payments would not stop the eviction process. Therefore, I

find the tenant was not re-instated. Since the landlord accepted payment for January 2014 I order the tenant be permitted occupancy until January 31, 2014.

Section 55 of the Act provides that where a tenant's request to cancel a Notice to End Tenancy is dismissed, the Arbitrator will provide the landlord with an Order of Possession if so requested during the hearing. I find the landlord entitled to an Order of Possession as requested during the hearing.

Given the date of this decision and the proximity to January 31, 2013 I provide the landlord with an Order of Possession effective two days after service upon the tenant.

With respect to the tenant's monetary claim of \$400.00 I find the tenant failed to provide sufficient particulars as to what is claim as based upon or how he calculated his claim. Nor, did the tenant provide evidence to substantiate his alleged loss of \$400.00. Further, I am satisfied that damage to his personal vehicle was likely the subject of an insurance claim. Therefore, I make no monetary award to the tenant based upon what was presented to me and the claim is dismissed.

#### Conclusion

The tenant' application was dismissed in it s entirety. The landlord's request for an Order of Possession has been granted and the landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

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: January 30, 2014

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Residential Tenancy Branch

