



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNR

## Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Unpaid Rent and Utilities dated November 6, 2008.

## Issue(s) to be Decided

1. Are the Landlords entitled to end the tenancy?

## Background and Evidence

This month to month tenancy started in approximately 1997. Rent is \$515.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant claimed that the established practice for paying rent was for Tenants to deliver their rent payments to the caretakers who had a suite in the rental property. The Tenant said if the caretakers were not there, he and other tenants would put an envelope with either cash or a cheque through the mail slot of the caretaker's door. The Tenant argued the caretakers did not reside in the rental property. The caretakers claim that the suite is their permanent residence.

The Tenant claims that at about 9:30 pm on November 1, 2008, he made his rent payment (which was cash) in the usual fashion by putting it in an envelope and putting it through the mail slot of the caretaker's unit. The Tenant also claims that sometime that weekend, the caretaker's unit was broken into and his and 2 other tenant's rent payments were stolen. The Tenant said he noticed around 1:30 am on November 2, 2008 the caretakers' vehicle was not on the property and he also noticed a gate open but didn't think anything of it at the time.

The Tenant said that around 6 pm on November 2, 2008, one of the caretakers asked him if he had made his rent payment then advised the Tenant that their suite had been broken into and 3 rent payments taken. The Tenant claimed the Landlords were advised of the break and enter by the caretakers but the Landlords advised the Tenant he would have to make another payment. When he failed to do so, the Landlords

served the Tenant with a Notice to End Tenancy for Unpaid Rent and Utilities on November 6, 2008.

The Landlords confirmed that there had been a break in of the caretakers' suite sometime during the evening of November 1<sup>st</sup> or early morning of November 2, 2008. The Landlords also confirmed that two tenants of another rental unit had moved out on or about the end of October and had not returned their keys. Consequently, after the break in, the Landlords changed the locks on the rental property entrance doors. The Landlords said they had no reason to disbelieve the Tenant that he made his payment but argued that he was responsible for the replacing the rent money that had been stolen from the caretakers' suite.

### Analysis

Based on the Tenant's established pattern of making rent payments by putting them through the caretaker's door slot (sometimes in cash), I find that he did make a rent payment \$515.00 on November 1, 2008 in this manner. I also find that this practice was condoned by the Landlords.

Consequently, I find that the Tenant paid his rent for November, 2008. Once the payment was made, the Landlords had the possession and control of it and therefore the risk of loss of that rent payment lies with the Landlords and they cannot shift that liability on the Tenant. Consequently, I find there are no rent arrears for November, 2008 and there are no grounds for the Notice to End Tenancy for Unpaid Rent and Utilities dated November 6, 2008.

### Conclusion

The Tenant's application is allowed. The Notice to End Tenancy for Unpaid Rent and Utilities dated November 6, 2008 is cancelled and the tenancy will continue.