



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

CNR

MT

FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated February 2, 2009 and effective February 12, 2009. The tenant's application also requested reimbursement by the landlord for the cost of the filing;

.Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on February 11, 2009, the landlord did not appear.

**Preliminary matter:** Request by Applicant to allow the tenant more time to make the application

In the application, the tenant requested more time to make the application. After receiving a Ten-Day Notice to End Tenancy for Unpaid Rent, the tenant has 5 days in which to pay the rent or make application to dispute the notice. The landlord delivered the Notice to End Tenancy on February 2, 2009 which under the Act is deemed served on that date. The tenant's application was dated February 9, 2009. It was determined to proceed with this application.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid was warranted. The questions to be answered include:
  - Did the tenant violate the Act by failing to pay rent when rent was due?
  - Did the tenant have a valid reason under the Act not to pay the rental amount in full?
  - Did the tenant pay the rent in full within 5 days of receiving the Notice to End Tenancy?
- Was the tenancy re-instated after the Notice?

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

### **Background and Evidence**

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy dated February 2, 2009. The tenant testified that the tenant has already paid the arrears owed for February 2009 and that the tenant also paid rent when it was due for March 2009. The tenant considered cancelling the hearing as the tenancy had been reinstated since the notice. However the tenant received advice that she should attend..

### **Analysis – Notice to End Tenancy**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. Under section 46 if a tenant pays the arrears within 5 days of receiving the Notice to end Tenancy for Unpaid Rent the Notice is cancelled. In this

instance, I find that the tenant did not pay the rent within five days. However, I do accept the tenant's testimony that the arrears for February were paid and the rent for March was also paid prior to the hearing. I accept that the landlord did not issue a statement to the tenant that the funds were being accepted for use and occupancy only. I find that the landlord's acceptance of the rent without condition constitutes a reinstatement of the tenancy relationship and therefore I find that the Ten Day Notice for Unpaid Rent dated February 2, 2009 must be cancelled.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated February 2, 2009 is permanently cancelled and of no force nor effect.

March 2009

Date of Decision

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Dispute Resolution Officer