



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for unpaid rent.

Service of the hearing documents was done in accordance to the Act and were sent to the landlord by registered mail on April 17, 2009-05-21

Both parties appeared, gave their testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross examine the other party and make submissions to me.

### Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- Are there arrears of rent and if so how much?

### Background and Evidence

This tenancy started on December 01, 2008. Rent is \$1,800.00 per month due on the 1<sup>st</sup> of each month. This is a fixed term tenancy until January 01, 2010 and includes a rent to purchase agreement that comes into effect at the end of the fixed term. At the present time the tenant is renting the property therefore, the application is covered under the *Residential Tenancy Act*.

The landlord testifies that the tenant has been repeatedly late with the rent which is due on the 1<sup>st</sup> of each month. On April 01, 2009 the tenant and landlord entered into a verbal agreement about the rent arrears and a payment agreement was put in place. This verbal agreement started on April 01, 2009 and ended on May 01, 2009. The agreement stated that the tenant pays \$250.00 on April 01, 2009 and \$1,000.00 on April 03, 07, 21, and May 01, 2009.

The tenant testifies that she paid the landlord the rent arrears as per the agreement on the given days to April 07, 2009 when the landlord issued a 10 day Notice to End Tenancy. The tenant disputes this Notice due to the verbal agreement in place.

The landlord testifies that the tenants have now paid \$1,800.00 on April 17, 2009 which was 10 days after the Notice was issued. The tenant has now paid all the rent overdue to the landlord. The landlord testifies that the tenant still owes \$2,000.00 as a deposit on the purchase of the house but this is not covered within the jurisdiction of the Residential Tenancy Branch.

## Analysis

A landlord can issue a Notice to End Tenancy for Unpaid Rent or Utilities under section 46 of the Act when rent or utilities are in arrears. The determination to be made is whether the Notice was validly issued under the Act and if rent was in arrears at that time. If so, the landlord's application is for the Notice to be enforced with an Order of Possession. If not, the tenant is requesting that the Notice be cancelled.

"*tenancy agreement*" means an agreement, **whether written or oral**, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities....." As the landlord and tenant entered into a verbal agreement about the tenancy and the payment of the arrears I find that the 10 Day Notice was issued prematurely to the end of the agreement between them. As the tenant has paid all the rent arrears in line with this agreement then the 10 Day Notice will be cancelled and the tenancy may continue.

## Conclusion

The tenants' application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated April 07, 2009 is cancelled 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: May 21, 2009.

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Dispute Resolution Officer