



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

CNR, RP, OPR, MNR, & FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession and monetary compensation for \$350.00 rent and late payments owed based on a Ten-Day Notice to End Tenancy for Unpaid Rent dated February 2, 2010. The Hearing was also to deal with an application by the tenant to cancel the Ten-day Notice and to order the landlord to make repairs. The tenant had also requested more time to dispute the notice.

Both the landlord and the tenant appeared and each gave testimony in turn.

### **Issue(s) to be Decided Landlord's Application**

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.
- Whether the landlord is entitled to additional rent owed in the amount of \$100.00 per month for 3 months due to an added occupant and two late payment charges of \$25.00 each.
- Whether the landlord is entitled to an Order of Possession based on the effective date shown on the Notice, shown as February 12, 2010

### **Issue(s) to be Decided Tenant's Application**

- Whether the Ten-Day Notice should be cancelled based on the tenant's position that rent being alleged was not actually owed and that late payments being alleged were caused by the landlord not being available and therefore are not owed.
- Whether the landlord should be ordered to complete repairs

### **Preliminary matter: Request for more time to Section 46 Dispute Notice**

The tenant has requested an extension in the 5-day deadline allowed for filing to dispute the Ten-Day Notice. Section 46(4) states that a tenant receiving a Ten-Day Notice to End Tenancy for Unpaid Rent must either dispute the Notice or pay the rent within 5 days of receiving it, otherwise there will be a conclusive presumption that the tenant has accepted that the tenancy is ending and that the tenant must move out on the date shown on the Notice.

In this instance the Notice was issued and posted on February 2, 2010 and deemed received by February 5, 2010. The tenant had 5 days to either pay or dispute the Notice which would have expired on February 10, 2010. The tenant made an application on February 11, 2010 which was beyond the five days allowed. The tenant stated that the reason for filing beyond the five-day period permitted under section 46 was because she did not have the \$50.00 payment required to apply and was not yet aware that the fee could be waived if the criteria was met.

Section 66 (1) does allow the dispute resolution officer to extend a time limit established by this Act, in *exceptional circumstances*. The word "exceptional" means that an ordinary reason for failing to comply with a specified time limit, such as: "*not feeling well*" or "*forgetting*", would not qualify as exceptional circumstances that would support an extension of the deadline.

Considering all circumstances, I find that, because the tenant was only one day beyond the time limit, had genuine financial and medical issues to overcome and then proceeded to take reasonable and appropriate steps to apply as soon as possible, the tenant should be granted the additional time to file the application.

### **Background and Evidence**

The tenancy began on February 1, 2009 with rent set at \$700.00 and a deposit of \$350.00 was paid.

The landlord testified that the tenancy agreement provided that for each occupant in the suite, an additional charge of \$100.00 rent would be owed. A copy of the agreement was in evidence to confirm this and sets the limit at beyond "14 cumulative days". The landlord testified that the tenant had another individual living with her during the month of November 2009 and the landlord requested that an application be filled out to add this additional occupant pursuant to the requirement in the tenancy agreement that was signed by both parties. The landlord testified that the tenant's daughter had completed such an application in November 2009 and the landlord then began to impose the extra \$100.00 per month rent charge as of December 2009. The landlord testified that the tenant failed to pay the extra \$100.00 for December 2009, January 2010 and February 2010 and continued to pay only \$700.00 accruing arrears of \$350.00. The landlord testified that the additional occupant's car was parked at the unit each day and it was clear to the landlord that there was an extra occupant until March 2010. The landlord testified that the tenant had advised that her daughter was moving out in March 2010 and the landlord is aware that the tenant's daughter was not residing in the unit thereafter. The landlord's position was that the tenant owed \$100.00 per month for December, January and February. The landlord also imposed \$25.00 late fees based on the tenant's failure to pay the additional rent and according to the landlord the total debt is now \$350.00.

The tenant disputed the landlord's right to charge \$100.00 extra for each month. The tenant acknowledged that her daughter had stayed with her as a non-paying guest for a period of time in November 2009, due to some personal problems that her daughter was having, and the tenant stated that the landlord had forced them, under threat of eviction, to sign the application to add her daughter to the tenancy. According to the tenant, at no time did she ever consider her daughter to be seen as an additional tenant. The tenant also admitted that her daughter stayed with her as a visitor for approximately 3 weeks in December 2009 because of serious health difficulties that the tenant was having, which required her daughter to be there to assist in her care. The tenant disputed that her daughter was ever living with her in January or February 2010. The tenant stated that in March she had told the landlord that her daughter was moving some of her stored possessions out of the unit, not that her daughter was "moving out", as stated by the landlord. A witness for the tenant testified that the tenant's daughter was not living there at present and as far as he knew she had only stayed there for about a month during December 2009. The tenant's position was that her daughter was visiting as a guest and by restricting guests the landlord was in violation of the Act. The tenant testified that she does not owe an extra \$100.00 for December, January nor February and therefore does not owe any late fees either. The tenant alleged that in the past the landlord had unfairly imposed late fees because the manager was nowhere to be found on the first day of the month. The tenant also mentioned that the landlord had neglected to do maintenance and repairs in a timely manner. However, the tenant was not seeking an order for repairs. The tenant testified that the landlord had no right to charge money that is not owed and then use that as a reason to unfairly terminate the tenancy.

#### Analysis – Notice to End Tenancy

Section 13 (2)(f)(4) of the Act states that a tenancy agreement must set out the agreed upon terms including the amount of rent payable and, if the rent varies with the number

of occupants, the amount by which it varies. I find that the agreement before me in this case, did contain such a provision.

I find that the landlord also had a term in the tenancy agreement that specifically stated that a person not listed in the tenancy agreement who:

*“resides in the rental unit for a period in excess of fourteen cumulative days in any calendar year will be considered to be occupying the rental unit contrary to this agreement and without right or permission of the landlord. This person will be considered to be a trespasser. A tenant anticipating an additional person to occupy the unit must promptly apply in writing for permission from the landlord. Failure to apply and obtain necessary approval by the landlord in writing is a breach of a material Term of this Agreement, giving the landlord the right to end the tenancy after proper notice.”*

I find that this term is not compliant with the Act in that it is overly restrictive and entails an intrusive role for the landlord in monitoring, for each calendar year, every visitor of every tenant, while tabulating the duration and frequency of each guest's visit. I find this would be a serious contravention of a tenant's right to privacy under section 28 and would likely violate section 30 of the Act as well. That being said, the tenancy agreement also contained a clear term charging \$100.00 per month extra rent for each additional occupant. and the tenant's daughter had actually filled out the required paperwork for permission to stay in the unit as an additional occupant.

While I accept the tenant's testimony that this was signed at the insistence of the landlord under threat of terminating the tenancy, I find that under the agreement, the landlord was at liberty to make such a demand. In fact, the landlord had the option under the Act and agreement to issue a One-Month Notice to End Tenancy for Cause based on a breach of a material term, if the tenant refused to fill out the application forms for the landlord's approval when an additional person plans on remaining in the unit for an extended period that would exceed that as mere “guest”.

There is no doubt that the tenant, based on her own testimony and that of her witness, did have an additional occupant in the unit for several weeks. I find that the tenant would thus owe additional rent for at least part of that period. I find that the fact the additional occupant was staying there for a compelling reason and for a specific purpose does not function to grant the tenant any special exemption from paying the extra rent charges specified under the agreement.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act or the tenancy agreement. In this instance the amount owed is not clear, but that does not necessarily negate the validity of the Notice for the purpose of an Order of Possession. A Ten-Day Notice can be issued and enforced even if the tenant was only one dollar in arrears.

The parties engaged in a mediated discussion and it was mutually agreed that the landlord was entitled to an Order of Possession, with the monetary claims waived. The tenant committed to paying \$700.00 rent for April 2010 on or before April 1, 2010 and the tenant will therefore be permitted to remain as a tenant in possession of the rental unit until noon on April 30, 2010 at which time the tenancy will end. Accordingly, I find that the landlord's monetary claim against the tenant will be dismissed and the landlord will be entitled to an order of possession effective at noon on April 30, 2010.

### **Conclusion**

Based on the testimony and evidence discussed above, I hereby grant the landlord an Order of Possession effective April 30, 2010. This order must be served on the tenant and can be enforced through the Supreme Court, should the tenant fail to vacate as ordered. The remainder of the landlord's application is dismissed without leave. The landlord must administer the tenant's security deposit in accordance with section 38 of the Act. The tenant's application is dismissed in its entirety without leave to reapply.

March 2010

Date of Decision

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Dispute Resolution Officer