

## **DECISION**

Dispute Codes      CNR, CNC, RP, O

### Introduction

This hearing dealt with the tenant's application to cancel Notices to End Tenancy for cause and unpaid rent as well as seek Orders for repairs. Both parties appeared at the hearing and were provided the opportunity to be heard, to ask questions of the other party and to respond to the submissions of the other party. Both parties confirmed service of documents upon them.

### Issues(s) to be Decided

1. Should the Notice to End Tenancy for unpaid rent be upheld or cancelled?
2. Should the Notice to End Tenancy for cause be upheld or cancelled?
3. Can the parties reach a mutual agreement to resolve the dispute?

### Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced in November 2007. The tenant paid a \$400.00 security deposit and a \$400.00 pet deposit. The tenant is currently required to pay rent of \$860.29 on the 1<sup>st</sup> day of every month.

It is undisputed that on April 26, 2010 the landlord posted a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on the tenant's door. The 1 Month Notice has an effective date of May 31, 2010 and indicates three reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

It is undisputed that the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the tenant's door. The 10 Day Notice indicates \$120.00 was owed as of April 1, 2010 for parking.

During the hearing, the first Notice to End Tenancy addressed was the 10 Day Notice. The issue of parking and parking charges has been an issue previously raised in dispute resolution file no. 242096. In the decision issued under file no. 242096 the Dispute Resolution Officer (DRO) did not make a finding as to whether the tenant was entitled to a parking space or obligated to pay for parking. Rather, the DRO encouraged the parties to find a compromise with respect to the parking dispute. The landlord testified the landlord has made efforts to reach a compromise regarding parking charges but the tenant will not agree to pay anything for parking. The landlord discounted the normal parking fee of \$35.00 per month to \$30.00 per month for the tenant and prepared a parking addendum. The tenant did not sign the parking addendum or verbally agree to pay \$30.00 per month. The landlord then issued the 10 Day Notice that is subject to this dispute and calculated the tenant owed four months of parking at \$30.00 per month.

Having heard the landlord did not have an agreement with the tenant for the tenant to pay \$30.00 per month starting January 1, 2010 I found the landlord did not establish an entitlement to collect such an amount from the tenant. Accordingly, I found there was

not a basis under the Act for the landlord to issue the 10 Day Notice upon the tenant and I set it aside.

The hearing proceeded with respect to the issuance of the 1 Month Notice. After much discussion the parties were able to reach a mutual agreement to end the tenancy that I record as follows:

1. The tenancy will continue until August 31, 2010 at which time the tenant must vacate the rental unit.
2. The tenant will return all keys and remotes in the tenant's possession to the landlord at the end of the tenancy.
3. The tenant will be required to pay rent for the month of July 2010 and will withhold rent for the month of August 2010.
4. The landlord will return the security deposit and pet deposit, plus applicable interest, to the tenant within 15 days of the tenancy ending provided the tenant leaves the rental unit clean and undamaged.

Included in evidence were copies of the Notices to End Tenancy, the previous dispute resolution decision, an unsigned parking addendum and various statements and memorandums of the landlord.

### Analysis

Since I set aside the 10 Day Notice during the hearing and provided reasons for such during the hearing and in the background of this decision; therefore, I do not provide further analysis with respect to the 10 Day Notice.

I accept the mutual agreement reached between the parties during the hearing and I make the terms of the agreement an order to be binding upon both parties. As the

parties reached a mutual agreement to end the tenancy I do not make any findings of fact or merit with respect to the issuance of the 1 Month Notice.

For clarity, both parties remain obligated to participate in a move-out inspection together and any deductions from the deposits for damages or cleaning must be made with the tenant's written agreement. If agreement for any deductions cannot be reached the landlord retains the right to make an Application for Dispute Resolution within 15 days of the tenancy ending or upon receiving the tenant's forwarding address writing, whichever date is later. The landlord is precluded from making any claims for unpaid rent or loss of rent with respect to the month of August 2010.

With respect to parking I have found the parking addendum provided as evidence is of no effect since the terms were not agreed upon by both parties and the parties did not execute the document indicating they agreed with the terms. Thus, the landlord is not entitled to collect parking fees from the tenant without the tenant's agreement and the tenant is not entitled to use the parking space provided to him in the parking addendum without agreement of the landlord. The tenant may retain the remote for the parking garage as he continues to store a motorcycle in the bike storage area.

With this decision the landlord is provided an Order of Possession effective August 31, 2010 to ensure the tenant returns vacant possession to the landlord on that date.

As the tenancy is ending and I did not hear sufficient testimony with respect to repairs required in the rental unit, if any, I do not make any repair orders to the landlord. However, if there are repair issues that require the landlord's attention during the remainder of the tenancy the parties must follow the proper procedure with respect to making requests for repairs and responding to requests for repairs.

## Conclusion

The 10 Day Notice has been cancelled. This tenancy shall end August 31, 2010 by mutual agreement in accordance with the terms outlined in this decision. I make no orders for repairs to the landlord.

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: June 17, 2010.

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Dispute Resolution Officer