



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes:**

*MNDC, OLC, CNR, LRE, RR, FF.*

### **Introduction**

This hearing dealt with applications by the tenant, pursuant to the *Residential Tenancy Act*.

The tenant applied for the following:

- An order to cancel the notice to end tenancy for rent, pursuant to Section 46;
- An order to compensate the tenant for expenses incurred and work performed
- An order to compensate the tenant for devalued tenancy through a rent abatement
- An order that the landlord comply with the Act or Agreement
- An order to suspend or set conditions on the landlord's right to enter the unit
- An order to allow the tenant to change the locks

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. On the basis of the evidence presented at the hearing, a decision has been reached.

### **Preliminary Matter 1: Multiple Notices**

The tenant's application was filed on May 31, 2010 seeking an order to cancel a Ten-Day Notice to End Tenancy issued by the landlord dated May 25, 2010, claiming rental arrears of \$1,050.00. However, the landlord had also issued 2 subsequent Ten-Day Notices after the original Ten-Day Notice of May 25, 2010 and each of these showed different amounts of the arrears allegedly owed. The tenant had not filed to dispute the subsequent notices within 5 days of the issuance.

While the act of serving subsequent Notices does not automatically function to cancel all earlier

notices, it can sometimes raise the question of whether the second Notice completely replaces the first Notice. This is called “waiver”. There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than that of waiver, provided that the other party concerned had been induced by such conduct to act upon the belief that there had been a waiver, and changed his or her position to his or her detriment.

Although, as a general rule the giving of a second Notice to End Tenancy does not operate as a waiver of a previous Notice already given, in this situation the amount demanded on the Notice of May 25, 2010 was \$1,050.00, and then the Ten-Day Notices issued on June 24, 2010 and June 25, 2010 indicated arrears of \$748.00 and \$247.66 respectively. I find that this may well have created a logical presumption in the mind of the tenant that the amount demanded on the first notice had later been amended thereby establishing an implied waiver of the initial Notice.

Evidently this had occurred because the landlord subsequently applied funds owed to the tenant for work performed towards reducing the rental arrears and recalculated the outstanding debt.

Given the above, I find that the Ten-Day Notice issued on May 25, 2010 must be cancelled and is of no force nor effect. As the original May 25 notice was no longer at issue, the tenant’s application could possibly have been amended to dispute the later notices instead of the May 25, 2010 Notice. However, as the 5 days to dispute these later Notices had already expired prior to this hearing, the tenant would also have had to request more time to dispute the June 25, 2010 Notice to proceed. This option was not feasible to entertain because of other factors that affected the hearing detailed below.

### **Preliminary Matter 2 : Jurisdiction**

I find that the issue of whether rental arrears were owed and how much, as well as some of the other requests by the tenant contained in the application were impacted by factors other than those governed by the Residential Tenancy Act.

Although the written tenancy agreement submitted into evidence did not indicate that the parties had made an arrangement for the tenant to earn part of the rent via a “rent-for-work” agreement, my examination of copies of documents submitted into evidence including communications between the parties during the tenancy, clearly indicated that the tenant’s rent would be reduced by the value of work performed during a given month and that this amount was calculated by the

landlord and based on invoices submitted by the tenants. This was confirmed by the parties. In fact, one issue under dispute between this landlord and tenant was the amount earned through work versus how much outstanding rent was still owed. Discrepancies also arose due to the availability of work and when the tenant's invoices were actually credited towards the rent.

Section 6 of the Act states that the rights, obligations and prohibitions established under the Act are enforceable between a landlord and tenant under a tenancy agreement and that a landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].

Section 58 of the Act states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of: (a) rights, obligations and prohibitions under this Act; (b) rights and obligations under the terms of a tenancy agreement that: (i) are required or prohibited under this Act, or: (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities.

In this instance, I find that debts and payments being claimed between the parties did not relate exclusively to the tenant's use, occupation or maintenance of the rental unit, or common areas or services or facilities and were partly contingent upon terms akin to an employment contract.

Even if such a "work-for-rent" term was clearly defined within the tenancy agreement, which it was not in this situation, I find that section 6(3)(a) of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with the Act or the regulations and section 5 of the Act states that landlords and tenants may not avoid or contract out of the Act or the regulations and that any attempt to do so is of no effect.

Given the above, by integrating terms relating to employment or a business relationship into a tenancy agreement, the parties risk having the affected terms severed from the tenancy agreement, or even a finding that the entire agreement is outside the jurisdiction of the Act.

In the matter before me, I find that assessing relative values of work performed by the tenant as applied to reduction of rent owed to the landlord clearly falls beyond my authority under the Act and this fact impedes a determination of whether or not the tenancy must end pursuant to a Ten-Day Notice issued for unpaid rent.

### **Analysis**

A mediated discussion ensued and the parties were able to reach mutually agreeable terms for

permanently ending this tenancy. The parties agreed to the following:

- Order of Possession to be issued to the landlord effective August 31, 2010
- The tenant will not be required to pay any further rent in relation to the past arrears or future occupancy of the unit for the remaining duration of the tenancy.
- The landlord will not be required to pay or credit the tenant for any past or current invoices for materials or work performed or other claims made by the tenant.
- The return of the tenant's security deposit will be dealt with at the end of the tenancy pursuant to section 38 of the Act.

### **Conclusion**

I hereby grant the landlord an order of possession effective Tuesday, August 31, 2010 at 1:00 p.m. This must be served on the tenant and is enforceable through Supreme Court if necessary.

I hereby order that no past or further funds are or will be owed to the landlord for rent.

I hereby order that no past or further funds are or will be owed to the tenant for work performed or to compensate for devalued tenancy.

I order that the tenant's security deposit be dealt by the parties with in compliance with section 38 of the Act as the applicable time.

The remainder of the application is hereby dismissed.

Dated: July 2010

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Dispute Resolution Officer