



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2010. The Tenant subsequently amended his application to cancel 10 Day Notices to End Tenancy dated May 3, 2010, June 22, 2010 and July 2, 2010.

This matter was originally scheduled for hearing on May 19, 2010 however on that date the Landlord claimed that she had not received the Tenant's evidence package. Consequently, the hearing was adjourned so that the Tenant could re-serve the Landlord. At the beginning of the reconvened hearing the Landlord claimed again that she had not received the Tenant's evidence package although the Tenant claimed that he had confirmation that it had been received by fax at the Landlord's head office. Consequently, the Landlord was sent another copy of the Tenant's evidence by fax at the commencement of the hearing and given an opportunity to review it. Following the hearing the Parties exchanged further evidence and they were given an opportunity to provide written submissions regarding this evidence.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

The parties entered a tenancy agreement dated August 15, 2009. Rent is \$1,011.00 per month payable in advance on the 1<sup>st</sup> day of each month. The Tenant was employed as a resident caretaker for the Landlord commencing June 1, 2009. The Parties did not have a written employment agreement however they agree that the Tenant received a salary plus a rent reduction of \$200.00 per month as remuneration for his duties.

On October 9, 2009, the Tenant went on medical leave. The Landlord allowed the Tenant to pay the reduced rent while on leave in the hope that he would return to active duties after six months. However by the end of March 2010, the Tenant continued to be on medical leave and the Landlord decided without any advance notice to the Tenant to reinstate the full rental rate as of April 1, 2010. Consequently, when the Tenant paid the reduced amount of rent for April and May, 2010, the Landlord served the Tenant

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with 10 Day Notices to End Tenancy for Unpaid Rent for each of those months. The Tenant resigned his position as the Landlord's resident caretaker effective June 1, 2010. The Tenant argues that he was not liable for the full amount of rent for April and May 2010 while he was still employed. The Landlord said it was the decision of the head office to reinstate the full amount of rent when it was clear the Tenant would not be returning to work after being on medical leave for 6 months.

The Landlord said the Tenant paid the full amount of rent (\$1,011.00) by cheque dated June 1, 2010 which was later returned for insufficient funds. The Landlord said the Tenant's co-Tenant made a payment of \$886.00 by cheque on June 1, 2010 and \$125.00 by debit card on June 4, 2010 but that his cheque was also returned for insufficient funds. The Landlord argued that the Tenant received receipts for each payment made regardless of the method and argued that there was no receipt issued or other record of a money order payment of \$886.00 by the Tenant on June 4, 2010. Consequently, the Landlord argued that in addition to the shortfall of rent for April and May 2010, the Tenant has not paid rent for June 2010. In support of her position, the Landlord provided bank copies of the alleged returned cheques.

The Tenant admitted that a stop payment was put on this first cheque in the amount of \$1,011.00 but argued that rent was subsequently paid in full by way of a debit payment of \$125.00 and a money order in the amount of \$886.00 given to an agent of the Landlord on June 4, 2010. The Tenant denied giving the Landlord a cheque for \$886.00 on June 1, 2010. The Parties agree that rent for July 2010 was paid in full on July 1, 2010 and the Tenant was issued a receipt for "use and occupancy only."

## Analysis

I find that there are no grounds for the 10 Day Notices to End Tenancy dated April 2, 2010 and May 3, 2010. In particular, I find that there was no agreement that the Tenant would be liable to pay the full amount of rent while on medical leave from his employment as the resident caretaker. Instead, I find that the Landlord's act of allowing the Tenant to reduce his rent while on medical leave is evidence of an agreement that the Tenant could pay reduced rent while he was still employed. There was no evidence that the Tenant would only be entitled to reduce his rent for a period of 6 months while on leave but rather I find that the Landlord arbitrarily decided to re-instate the full rental rate as of April 1, 2010. Consequently, I find that there was an agreement that the Tenant could pay the reduced rent while he was still employed. Given that the Tenant was employed until May 31, 2010 and that he paid the reduced rent for April and May 2010 within 5 days of receiving the 10 Day Notices, I find that there are no grounds for those Notices and they are cancelled.

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The Landlord claimed that she served the 10 Day Notice to End Tenancy dated June 22, 2010 on the Tenant in person on June 22, 2010 after she received notification from her bank that the Tenant's and his co-Tenant's rent cheques for June 2010 in the respective amounts of \$1,011.00 and \$886.00 were returned for insufficient funds. The Landlord provided bank copies of 2 returned cheques and the accompanying bank documentation identifying the accounts on which they were drawn and the dates they were returned. The Landlord argued that the Tenant was given receipts for each payment he made during the tenancy but that no receipt was issued for a money order in the amount of \$886.00 on June 4, 2010 because the Tenant never gave the Landlord a money order that day or at all. The Landlord also argued that she has kept a record of payments made by the Tenant over the course of the tenancy and that the Tenant has not made a replacement payment for the cheque that was returned in the amount of \$886.00 for June 2010.

The Tenant's co-Tenant argued that he did not give the Landlord a cheque in the amount of \$886.00 for June 2010 rent on June 1, 2010 but rather paid that amount by money order on June 4, 2010. The Tenant also argued that the bank copy of the returned cheque in the amount of \$886.00 appears to be dated March 5, 2010 and he suggested that the Landlord had erroneously deposited a cheque she had on file in addition to the money order. The Tenant provided a copy of a proof of purchase of the money order from his financial institution. The Tenant said he gave this money order to an agent of the Landlord. The Tenant suggested that the Landlord had no record of the money order because her agent had deposited it into a wrong account.

The Tenant's co-Tenant said he received a receipt from the Landlord for this payment but could not explain why it was dated June 1, 2010 because he thought he had received a receipt for a debit payment of \$125.00 on the same day issued by the same person which was dated June 4, 2010. In written submissions, the Tenant claimed that the money order was paid on June 1, 2010 by his co-Tenant and that he directly deposited the amount of \$125.00 on June 4, 2010. In his evidence, the Tenant's co-Tenant said he told the Landlord's agent that she had made an error when she checked off the box on the receipt that the payment of \$886.00 was by cheque rather than by money order but that she did not think it would matter.

Based on the Landlord's banking records, I find that the returned cheque in the amount of \$886.00 appears to bear a date of March 5, 2010 and therefore I find that it is reasonably likely that the Tenant did not give this cheque to the Landlord on June 1, 2010 as he claimed but rather that the Landlord deposited a cheque it had received previously. The Tenant argued that his bank receipt for the purchase of a money order made out in the Landlord's name was conclusive proof that he paid the overdue rent for June 2010. However, I find that this evidence only shows that the Tenant purchased a money order on June 1, 2010 in the amount of \$886.00 and does not prove that it was

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given to the Landlord. Nevertheless, the weight of the evidence suggests and I find that the Tenant did not give the Landlord a cheque for \$886.00 on June 1, 2010 but instead gave the Landlord a money order that date and in that amount for which he was issued a receipt and as a result, I find that there are no rent arrears for June 2010.

The Landlord admitted that part of the alleged rent arrears included on each of the 10 day Notices were for late fees and NSF charges. However, late fees and NSF charges are not defined as rent under s. 1 of the Act and therefore should not have been included on the 10 Day Notices as unpaid rent.

The Landlord said she also served the Tenant with a 10 Day Notice to End Tenancy on July 2, 2010 as a result of the unpaid rent for June 2010 and the alleged unpaid rent for April and May, 2010. As I have also found that there are no rent arrears for April, May and June, 2010 I find that there are no grounds for this Notice and the Tenant's application to cancel it is granted.

## Conclusion

The Tenant's application is granted; the 10 Day Notices to End Tenancy dated April 2, 2010, May 3, 2010, June 22, 2010 and July 2, 2010 are 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: July 13, 2010.

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Dispute Resolution Officer