



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes** MT, CNR, O

### **Introduction**

This hearing was convened by way of conference call to deal with the tenants' application for an order permitting the tenants more time to apply to cancel a Notice to End Tenancy and for an order cancelling the Notice to End Tenancy.

The male tenant attended the conference call hearing with an Advocate, who both provided affirmed evidence. The landlord did not attend the conference call hearing.

### **Issues(s) to be Decided**

Is the tenant entitled to more time to make an application to cancel a Notice to End Tenancy?

Is the tenant entitled to an order cancelling a Notice to End Tenancy?

### **Background and Evidence**

This month-to-month tenancy began approximately 23 years ago. The tenant testified that rent in the amount of \$1,200.00 is payable in advance on the 1<sup>st</sup> day of each month. The tenant testified that the tenants were behind in their rent approximately a year ago, and they had a conversation with the landlord wherein the landlord agreed to accept 2 post-dated cheques for the arrears, and the tenants kept up the current rental payments.

The tenant further testified that the landlord served the tenant one page of a 30 Day Notice to End Tenancy for Cause on or about September 8, 2010. The second page of

the notice was not served and therefore the tenant did not know the reason for issuing it. He contacted an Advocate, and then called the landlord the following day and asked for the second page. The landlord arrived at the rental unit soon thereafter and served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the tenant personally. Both pages were served. A copy of that notice was provided by the tenant in advance of the hearing, and it states that the tenants failed to pay rent in the amount of \$2,500.00 that was due on September 1, 2010 and contains an expected date of vacancy of September 9, 2010, which is the same day that the notice was issued.

The tenant further testified that the rent for the month of October, 2010 was paid on the 1<sup>st</sup> day of October, 2010 by personal cheque and the landlord did not issue a receipt.

On September 14, 2010 the tenant completed a Tenant's Application for Dispute Resolution disputing the Notice to End Tenancy, however did not file it with the Residential Tenancy Branch until September 15, 2010. Therefore, the tenant has applied for more time to make the application to cancel the Notice to End Tenancy.

The tenant also testified that he served the Tenant's Application for Dispute Resolution and notice of hearing documents on the landlord personally on September 16, 2010.

The Advocate for the tenants testified that the tenants are both elderly and disabled, and the Tenant's Application for Dispute Resolution was filed as soon as they were able to do so, and that in light of the inconsistencies by the landlord's documentation and the lengthy term of the tenancy, the tenants ought to be given an extra day to make the application to cancel the Notice to End Tenancy.

### **Analysis**

I am satisfied in the evidence before me that the landlord was served with the Tenant's Application for Dispute Resolution and notice of hearing documents as testified by the tenant. The landlord did not attend the hearing to defend the notice to end tenancy issued to the tenants.

I am also satisfied that the tenant has paid the rent for the month of October, 2010, since being served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the landlord did not issue a receipt "For Use and Occupancy Only," and has therefore reinstated the tenancy.

In the circumstances, I find that the tenants' are entitled to an order allowing the tenants more time to make the application, and I so order.

I further find that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities contains an expected date of vacancy that does not comply with the *Act*. The *Residential Tenancy Act* states that:

**46 (1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

The landlord did not provide for the 10 days required under Section 46 (1) and did not attend the hearing to defend the notice.

### **Conclusion**

For the reasons set out above, the tenants' application for more time to apply to make the application to cancel the Notice to End Tenancy is hereby allowed.

I further order that both of the Notices to End Tenancy are hereby cancelled.

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: October 21, 2010.

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Dispute Resolution Officer