



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's request to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

On a procedural note, both parties attempted to introduce evidence and issues that are not part of this application. Both parties were informed that I would make only the necessary findings in order to reach a decision with respect to the validity of the Notice to End Tenancy issued November 27, 2010.

### Issues(s) to be Decided

Has the landlord established that the tenant has put the landlord's property at significant risk?

### Background and Evidence

The parties provided undisputed testimony as follows. The rental unit was formerly occupied by the tenant's grandfather. The tenant and the tenant's roommate began paying the landlord rent of \$600.00 per month starting April 2010 (herein referred to as the tenants). The tenants pay rent on the 15<sup>th</sup> day of every month. On November 11, 2010 the landlord gave the tenants a copy of a letter the landlord received from the landlord's insurance company. The letter from the insurance company states that the

landlord's insurance policy requires each tenant to have certified primary heat in each unit. The letter goes on to provide examples of acceptable primary heat and not acceptable forms of heat. Portable space heaters are not an acceptable form of primary heat.

I also heard that on November 15, 2010 the landlord issued a letter to the tenants instructing them to activate a natural gas account and use the gas stove to heat the unit by November 26, 2010. The tenants did not activate a gas account and on November 27, 2010 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) to the tenants with an effective date of December 31, 2010. The Notice indicates the reason for ending the tenancy is that the tenants have put the landlord's property a significant risk.

The parties were in dispute as to when the tenancy commenced. The landlord submitted that on October 6, 2010 he spoke with the tenant's grandfather and at that time the landlord realized the grandfather would not be returning to the rental unit. The landlord prepared a written tenancy agreement for a tenancy set to commence November 1, 2010 but the tenants would not sign it. The landlord pointed out that he had been issuing rent receipts in the grandfather's name.

The tenant submitted that in late February 2010 the landlord agreed that the tenants would take over the rental unit commencing April 2010 and the landlord has accepted rent from the tenants since then. The tenant explained that he did not sign the written tenancy agreement presented by the landlord as he did not agree with the terms recorded by the landlord.

Despite the lack of a written tenancy agreement between the tenants and the landlord, both parties agreed that the tenants are responsible for paying for their own utilities.

The landlord explained that the residential property is a four-plex with the rental unit being one of two basement units. The building was formerly heated by one large

furnace but several years ago the heating system was replaced and the basement units are now heated by gas stoves that sit on a hearth in their respective living rooms. The tenants have ceased using the gas stove and rely upon portable electric heaters. The landlord's insurance company has informed the landlord that portable electric heaters are not acceptable as a primary heat source and the insurance company will not insure the property unless the gas account is activated for all the units and there is some gas consumption for each unit. The tenants have refused to activate a gas account which puts the property at significant risk.

The tenant testified that the gas stove is expensive to use as a heat source and heats only the living room. The tenant described how the gas stove does not have a fan or blower and has a vent approximately 2" by 20" long. The two bedrooms and kitchen remain cold even if the gas stove is in use. In addition, setting up a gas account requires a security deposit of a few hundred dollars. The tenant testified that he learned from the city building inspector that principle heating systems should be able to heat each room up to 22 degrees Celcius and if the primary system does not do that then baseboard heaters should be installed. The tenant submitted that the gas stove does not comply with building code requirements.

The landlord refuted the tenant's submission that the gas stove is expensive by pointing to gas bills for the other basement unit which the landlord described as a mirror image of the rental unit. The landlord also submitted that the tenant's grandfather had a gas account and used the gas stove a lot which may explain why the tenant is of the belief that the gas stove is expensive to use.

The tenant submitted that he does not object to activation of the gas account and ignition of the pilot light in order for the landlord to comply with the requirements of his insurance company; however, the tenant would not use the gas stove and does not want to pay for the costs associated having a gas account. The landlord was not agreeable to paying for any part of the gas account costs.

Provided as documentary evidence were copies of the Notice, an unsigned tenancy agreement and addendum, the letter from the landlord's insurance company, communication to the tenants regarding the gas stove and other issues, and copies of gas bills for the other basement unit.

### Analysis

Despite the parties' disputed position as to when the tenancy commenced, I am satisfied that a tenancy formed between the parties. The landlord has been accepting rent from the tenants and the tenants have been provided occupancy of the rental unit. The landlord issued letters to the tenants on November 15, 2010 addressing them as tenants in his letter. Further, the landlord issued a 1 Month Notice to the tenants. In the absence of a signed written tenancy agreement the parties have a verbal tenancy agreement.

Verbal tenancy agreements are recognized under the Act and its terms are enforceable provided the terms are agreed upon and do not violate the requirements of the Act. Upon hearing from the parties, I find that the tenants are responsible for utility costs. However, I am not satisfied that as a term of the tenancy the tenants are required to activate a gas account and use the gas stove. I find that the landlord is not precluded from activating a gas account in the landlord's name and charging the tenants for consumption of gas.

Upon review of the insurance company letter I am not satisfied that the insurance company has specifically required the activation of a gas account for the rental unit in order to continue insurance coverage. Rather, the insurance company is requiring that the landlord ensures the rental units have a certified primary heating source, other than portable space heaters or wood heat. The insurance company outlines acceptable forms of primary heating which may be accomplished by the installation of baseboard heaters, a furnace, a heat pump, etc.

In light of the above considerations, I find the landlord has alternative remedies to comply with the insurance company requirements, such as activating the gas account in the landlord's name or installing other forms of primary heat. Accordingly, I do not find the tenants' actions or inaction has put the landlord's property at significant risk. Therefore, I grant the tenant's application and I set aside the Notice to End Tenancy with the effect that this tenancy continues until such time it legally ends.

I award the filing fee to the tenant and authorize the tenant to deduct \$50.00 from a subsequent month's rent payment.

Should the landlord choose to activate a gas account and charge the tenants for gas consumption the Act provides a method for the landlord to charge a tenant for utilities. The landlord must give the tenants written demand for payment of utilities and the tenants must be provided 30 days to pay the landlord. If the tenants do not pay the amount demanded in writing, the landlord may treat the unpaid utilities as unpaid rent and issue a 10 Day notice to End Tenancy for Unpaid Rent or Utilities.

### Conclusion

The Notice to End Tenancy issued November 27, 2010 is cancelled and this tenancy continues. The tenant has been awarded the filing fee cost and may deduct \$50.00 from a subsequent month's rent payment.

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: December 21, 2010.

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Dispute Resolution Officer