



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

CNR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated December 8, 2010 with effective of December 18, 2010.

Despite being served by registered mail sent on December 10, 2010, the landlord did not appear.

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

The issues to be determined based on the testimony and the evidence is whether the landlord's issuance of the Ten-Day Notice to End Tenancy for Unpaid Rent should be cancelled.

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

### **Background and Evidence**

Submitted into evidence by the applicant/tenant in support the application was, a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 8, 2010 indicating that rental arrears of \$900.00 due on October 1, 2010 and utility costs of \$200.00 pursuant to a written demand issued on October 1, 2010 were owed.

The tenant's agent testified that the tenancy began informally in September 2010 and at that time the parties had entered into a verbal tenancy agreement that the vacant building owned by the landlord would be occupied by the tenants and in exchange the tenants would pay the utility costs. However, the method of billing and payment for utilities was never specified. The tenant testified that the landlord has never issued any utility bills nor demands for payment of utilities. The tenant testified that in October 2010 the landlord, who lives in another municipality, suddenly appeared at the rental unit without prior notice accompanied by police and municipal inspectors. The tenant

testified that it was not clear what the purpose of the landlord's visit was, however at that time the landlord claimed that the rental rate for the unit was \$300.00 per month. The tenant testified that they were willing to accept this newly introduced change in the rental rate, despite the landlord's earlier verbal representations that payment of utilities was all that was required. The tenant's agent later went to the landlord's place of residence and attempted to pay the landlord the rent stated as owed. However, According to the tenant, the landlord would not accept the rent payment that the tenant had delivered in person and refused to discuss the matter.

The landlord then served the tenant with a Ten-Day Notice to End Tenancy for Unpaid Rent showing arrears owed in the amount of \$900.00 as of October 1, 2010, in addition to \$200.00 utilities owed as of October 1, 2010. The tenant testified that the tenants made another attempt to the landlord by sending several money orders by registered mail in the amount of \$300.00 for each month of the tenancy. The tenant testified that the landlord failed to pick up the registered mail. The tenant submitted the tracking numbers of the registered mail into evidence and testified that copies of each money order receipt have been retained for the record. The tenant was requesting that the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled.

## **Analysis**

Section 13 of the Act states that a landlord must prepare in writing every tenancy agreement entered into and that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out all of the following:

- (a) the standard terms;
- (b) the correct legal names of the landlord and tenant;
- (c) the address of the rental unit;
- (d) the date the tenancy agreement is entered into;
- (e) the address for service and telephone number of the landlord or the landlord's agent;
- (f) the agreed terms in respect of the following:
  - (i) the date on which the tenancy starts;
  - (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;

- (iii) if the tenancy is a fixed term tenancy,
    - (A) the date the tenancy ends, and
    - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date;
  - (iv) **the amount of rent payable for a specified period**, and, if the rent varies with the number of occupants, the amount by which it varies;
  - (v) the day in the month, or in the other period on which the tenancy is based, on which the rent is due;
  - (vi) **which services and facilities are included in the rent;**
  - (vii) the amount of any security deposit or pet damage deposit and the date the security deposit or pet damage deposit was or must be paid.
- (my emphasis)

The Act requires that within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.

In this instance I find that the landlord did not create a written tenancy agreement in compliance with the Act. I find that the parties instead entered into a verbal tenancy agreement. Although a written agreement is required, oral terms contained in verbal tenancy agreements may still be recognized and enforced because section 1 of the Act, contains the following definition of "tenancy agreement":

*"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;* (my emphasis)

Given the above, I find that full payment of rent when due, based on the rental rate that has been agreed-upon by all parties, would be an enforceable term in the tenancy agreement. Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, regulations or tenancy agreement and section 46 of the Act permits a landlord to terminate a tenancy for unpaid rent if a tenant does not pay.

However, I find that the December 8, 2010 Ten Day Notice to End Tenancy for Unpaid Rent in this instance is based on unclear data regarding what rental rate was being charged and precisely what utility arrears are owed, if any. Moreover, a tenant has a right under the Act to cancel a Ten Day Notice to End Tenancy for Unpaid Rent by paying any arrears owed within 5 days. I find that the landlord's failure to clarify the applicable rent in writing and to ensure that the parties all freely agreed on this rental rate and the landlord's refusal to accept payment are valid reasons to justify cancelling the Ten Day Notice to End Tenancy for Unpaid Rent dated December 8, 2010.

Accordingly, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated December 8, 2010 is cancelled and of no force nor effect.

With respect to the key terms in the tenancy agreement between these two parties, I find that the landlord is required to negotiate a proper written tenancy agreement with the tenants, to be signed by all parties and to include the required information under section 13 of the Act, and in particular:

- The monthly rental rate agreed upon
- The required method of payment of the rent
- Whether or not utilities must be paid by the tenant
- What process for billing the utilities and paying them will be followed
- Other relevant terms important to the parties.

If the landlord fails to comply with the Act as outlined above, I hereby order that, unless otherwise agreed in writing by both parties, the monthly rent for the rental unit in question is presumed to be \$300.00 per month, payable on the first day of each month by cheque or money order mailed to the landlord at the landlord's residential address. I further order that, unless otherwise agreed in writing by both parties, the tenant must pay the landlord directly for the hydro used by the tenant using a cheque or money order sent to the landlord's address, due within 30 days after receiving from the landlord a copy of the official utility invoice confirming the amount owed.



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## **Conclusion**

Based on the testimony and evidence discussed above, I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated December 8, 2010 is cancelled and of no force nor effect.

I further order that the landlord and the tenants together create a proper written tenancy agreement signed by all parties as required under the Act. Failure to comply with the above will result in rent deemed to be \$300.00 per month payable on the first day of each month by cheque or money order mailed directly to the landlord and the tenant's payment of billed hydro within 30 days upon provision of the utility company receipt will also be an enforceable term of the tenancy.

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: January 2011.

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Residential Tenancy Branch