



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, MNDC

### Introduction

This hearing dealt with the Tenant's application to cancel a Notice to End Tenancy for Unpaid Rent and for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement.

The Tenant and the Landlord's Agents appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

### Issue(s) to be Decided

Is the Tenant entitled to an Order cancelling the Notice to End Tenancy and for a monetary order?

### Background and Evidence

This tenancy began on August 15, 2009, for a fixed term to August 31, 2010, and continues now on a month to month basis. The monthly rent is \$860.00 and a security deposit of \$430.00 was paid in August 2009.

On September 16, 2010, a dispute resolution proceeding was held in response to the Tenant's application to dispute the Landlord's previous 10 Day Notice to End Tenancy, issued on August 20, 2010, listing the amount of \$430.00 as unpaid rent for May 2010. On September 17, 2010, I issued a decision to the Tenant and Landlord making the following findings and orders, among others:

1. The 10 Notice to End Tenancy for Unpaid Rent served August 20, 2010 was cancelled as the Landlord failed to provide evidence to substantiate the Notice;

At the present hearing, although not submitted into evidence by either party, I heard testimony that the Landlord issued the Tenant a 10 Day Notice to End Tenancy for

Unpaid Rent (the "Notice"), on January 7, 2011, listing \$879.00 as unpaid rent, by posting on the door. Where a Notice is posted on the door, it is deemed to be received three days later under section 90 of the Act. Thus the Tenant was deemed served on January 10, 2010, and filed the Application to dispute within the required time.

I heard testimony from the Landlord's Agent that the amount listed on the Notice included the same \$430.00 from May 2010 and a deficiency in the January rent of \$449.00.

I heard testimony from the Landlord's Agent that the Landlord's position is that the Tenant still owes \$430.00 from May 2010 as the previous Decision cancelling the earlier Notice of August 20, 2010, was based upon a lack of preparation and supporting documents, not that rent wasn't owed.

I heard testimony from the Landlord the balance of the unpaid rent for January, \$449.00, was paid on January 14, 2011, within the required time listed on the Notice.

The Tenant's claim includes a request for a monetary order of \$1,500.00 for loss of quiet enjoyment of the rental unit and harassment. In support of the claim, I heard testimony from the Tenant that she has been continually harassed by the property manager since the previous hearing about paying the \$430.00, that she has asked him to stop bothering her, and has suffered a loss of quiet enjoyment due to the continued collection efforts.

I heard testimony from the Tenant that the actions of the Landlord have caused her such stress that she is being forced to move early as her health is being adversely affected.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all other oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Once the Tenant made an Application to dispute the Notice, the Landlord became responsible to prove the Notice to End Tenancy is valid.

I find that when the Notice was issued, the Tenant owed the amount of \$449.00, not \$879.00 listed, and that the Tenant paid this amount within five days of being served with the Notice. **I order the Notice to End Tenancy be cancelled and this tenancy continues.**

As this was the second time the parties have been involved in dispute resolution proceedings with respect to rent allegedly owing from May 2010, and the Landlord was not successful on that occasion, **I find the Tenant does not owe the Landlord any rent from preceding months and I ORDER the Landlord to cease actions and issuing 10 Day Notices aimed at trying to collect rent owing from previous months.**

**I further ORDER the Landlord, or any agent acting on behalf of the Landlord with respect to this rental unit, must immediately cease making attempts to try to collect rent allegedly owed from preceding months.** For clarity, the Landlord is precluded from issuing any 10 Day Notices with respect to rent allegedly owed prior to the hearing date of January 25, 2011. The Landlord is informed that subsequent attempts to issue Notices or collect rent for months preceding January 25, 2011, may constitute harassment of the Tenant and entitle the Tenants to additional compensation from the Landlord.

In dealing with the Tenant's monetary claim for loss of quiet enjoyment under Section 28 of the *Residential Tenancy Act*, a Landlord must not harass or cause the Tenant to be harassed. The Tenant alleged she has been harassed by the Landlord for continuing collection efforts after the hearing of September 16, 2010, for the May 2010, rent allegedly owed and that her health has declined.

I find that the Landlord has not provided the Tenant with her right to quiet enjoyment for continuing collection efforts for a debt not owed. In arriving at this conclusion, I am persuaded by the testimony and conduct of the Landlord's Agents. Upon my query to Agent VL, the property manager, as to the number of contacts with the Tenant, I heard Agent DC expressly instruct him as to what to say. Further, I overheard the Landlord's Agents conversing in undertones throughout the hearing. Thus I find the Agents' testimony lacked credibility.

### Conclusion

I find that the tenancy has been devalued and the Tenant is entitled to 10% for the Landlord's breach in not providing the Tenant with her right to quiet enjoyment for the months of October, November, December 2010 and January 2011.

**I find the Tenant is entitled to the above compensation and I award the Tenant \$344.00.** The Tenant is provided a Monetary Order to ensure payment of this amount is made by the Landlord. **Alternatively, the Tenant is entitled to withhold the amount of \$344.00 from either the February or March 2011 rent in satisfaction of this award.**

Should the tenancy end before the Monetary Order is satisfied the Tenant may demand payment of the outstanding balance and enforce payment of the outstanding balance in Provincial Court (Small Claims).

**The Landlord and any Agent is ordered to immediately cease making attempts to try to collect rent allegedly owed from preceding months.**

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 27, 2011.

---

Residential Tenancy Branch