



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes**

CNR

### **Introduction**

This hearing dealt with an application by the tenant to set aside a 10 Day Notice to End Tenancy For Unpaid Rent (the Notice), dated January 22, 2011, with an effective date of February 01, 2011.

Both parties attended the hearing and were given full opportunity to present relevant evidence, make prior relevant submissions and provide sworn testimony in the hearing.

It must be noted that the parties attended a dispute resolution hearing on January 21, 2011 brought on by the tenant in respect to issues unrelated to those before this hearing, and that a decision of the Director was issued.

The landlord and the tenant agree that they have a mutual agreement to end the tenancy February 28, 2011. At the outset of the hearing the landlord testified that he was not seeking an Order of Possession in this hearing, but in this matter was seeking the payment of the purported unpaid rent.

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

Is the notice to end tenancy valid?

Should the Notice to End dated January 22, 201 be set aside?

### **Background and Evidence**

In this type of application, the burden of proof rests with the tenant to provide compelling evidence that the rent has been paid, or paid within 5 days of receiving the Notice to End, or that they have withheld the rent as permitted by an Order of a Dispute Resolution Officer. The tenant claims that they paid the rent in cash in the amount of \$750 on January 14, 2011 to the wife of the respondent landlord (the wife) who then

gave her a hand-written and signed commercially produced receipt blank for the cash dated January 01, 2011. The tenant provided a copy of the receipt and a page statement itemizing the individual \$100 and \$50 bills, along with their serial numbers – purportedly used to pay the rent - all of which totalled the amount owed for the rent. The tenant testified that she learned of this technique from a television program. The tenant also provided five (5) receipts for the rent from 2008 and 2009 – one of which is signed by the wife, and which neither party disputes is the signature of the wife.

The landlord testified that the tenant has not paid the rent, but has attempted to do so several times in January 2011 in an amount less than the full amount of rent, and that eventually he determined to give the tenant a Notice to End for Unpaid Rent.

The landlord disputes the tenant's evidence of the receipt dated January 01, 2011 in that the signature on the January 01, 2011 receipt is neither a receipt used by the landlord, nor does it contain a true signature from his wife. The landlord claims the receipt provided by the tenant is fraudulent. The landlord testified that the signature on the receipt issued in 2008 is a valid receipt, containing the true signature of his wife, despite the fact that his wife places the last vowel in the surname before the last "L".

The tenant's advocate argued that the decision of the Director (DRO's decision) dated January 21, 2011 is a detailed decision; yet, made no mention of rent, and that if unpaid rent was an issue on that date that the DRO's decision would have indicated as much, and therefore, the decision should be accepted as proof the rent was paid.

### **Analysis**

On preponderance of the evidence, and on the balance of probabilities, I make the following findings.

I have considered the tenant's argument that the DRO's decision should be interpreted as confirmation the rent was paid. I find no basis in this assertion by the tenant. The DRO's decision is based on matters before the DRO – and the issue of rent was not before the DRO. It is not logical that an omission of information should automatically be interpreted as supporting confirmation of other facts.

Based on the evidence provided by the tenant themselves, I find that the tenant was given a receipt in October 2008 containing the true signature of the landlord's wife. I find that this signature highly contrasts with the signature on the receipt dated January 01, 2011, purportedly issued by the same individual. I find the two signatures differ greatly in the number of letters they contain, the general style of the letters, and the

order of the letters in the signature names themselves. Of particular difference is that the 2008 signature, provided by the tenant and confirmed by the landlord to be the signature of the wife, places the last vowel of the landlord's name before the last "L", and in the 2011 receipt, the vowel is placed after the "L". On the face of this evidence, I find that the receipt dated January 01, 2011 was not one signed by the wife. As a result, I prefer the sum of evidence of the landlord that the rent for January 2011 has not yet been paid. As a result, I find the landlord's Notice to End for Unpaid Rent dated January 22, 2011 **is upheld, valid and of full effect**, and the tenant's application effectively **is dismissed**. The landlord has not orally requested an Order of Possession, but is at liberty to apply for a Monetary Order for the unpaid rent.

### **Conclusion**

The tenant's application **is dismissed**. The landlord's Notice to End is upheld. The tenancy continues.

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*.