



# 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 a tenant's request to cancel a Notice to End Tenancy. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party with respect to matters relevant to this dispute.

The parties presented themselves as acrimonious towards each other and rarely agreed on any facts. The parties had to be cautioned several times to answer the questions asked of them and not speak out of turn.

The applicant did not indicate a unit number in making the application and the Notice to End Tenancy indicates two units were involved. I determined that the residential property has multiple units and most of the hearing time was spent trying to determine jurisdiction to resolve this dispute.

### Issue(s) to be Decided

1. Is or was there a tenancy to which the Act applies for Room 6 at the residential property?
2. Is or was there a tenancy to which the Act applies for the basement suite at the residential property?
3. Should the Notice to End Tenancy be cancelled or upheld?

### Background and Evidence

Upon hearing from the parties, I make the following findings as to the background concerning the applicant's occupancy at the residential property.

Starting November 2010 the applicant moved into Room 6 to live with his girlfriend, who is the daughter of the landlord. Both parties indicated that Room 6 was previously

occupied by the landlord's daughter but that after a dispute between the applicant and the landlord's daughter the daughter has not been able to reside at the residential property. The applicant has continued to reside in Room 6 but has not paid any monies to the landlord for rent for Room 6.

The respondent submitted that that a verbal tenancy agreement was made with the applicant on December 23, 2010 for the basement suite. The terms of the agreement, according to the landlord, was that the tenant would pay a discounted rent of \$375.00 in exchange for repair work to be done in the basement. The tenancy would be one month in duration and the tenant would have to vacate the basement unit by January 31, 2011. The landlord submitted that the tenant did not pay rent and on January 11, 2011 the landlord had a Notice to End Tenancy served upon the tenant. The tenant disputed the Notice on January 17, 2011 but has not paid any monies for rent.

Upon enquiry, the landlord testified that they did not specify what day the rent would be paid but that it was to be paid after the tenant received income from the Ministry.

The tenant submitted there was an agreement for him to move into the basement suite and that he would perform work in lieu of paying rent. The tenant testified the tenancy was not for a fixed term and was to continue on a month-to-month basis.

The tenant had submitted a copy of a tenancy agreement and receipts for rent and a security deposit. The landlord asserted that the tenancy agreement and receipts were prepared by the tenant and were fraudulent. The tenant acknowledged preparing the tenancy agreement and receipts but explained that this was part of his duties as the caretaker for the property. The landlord vehemently denied ever hiring the tenant as the caretaker.

### Analysis

As the parties were informed during the hearing, the Act and my authority to resolve disputes is limited to residential tenancy agreements. Accordingly, I must be satisfied that there is or was a tenancy agreement in place between the parties for the rental unit subject to this dispute. Further, I do not have authority to resolve disputes related to employment contracts or other contracts for services. In only limited circumstances may such a contract be relevant to a tenancy agreement.

With respect to Room 6 I find insufficient evidence that the parties have or had a tenancy agreement. Rather, I find it more likely the applicant was an occupant of the room as a person permitted on the property by the landlord's daughter. Accordingly, the

applicant and respondent do not have rights and obligations under a tenancy agreement or the Act with respect to Room 6. Therefore, I refuse to take jurisdiction regarding the applicant's use of Room 6.

Upon review of the tenancy agreement and Notice to end Tenancy and having heard from the parties, I accept that the signature that appears on the written tenancy agreement is not that of the landlord and I do not find the written tenancy agreement binding upon the parties.

However, both parties acknowledged entering into a verbal tenancy agreement with respect to a tenancy for the basement suite and I accept that I have jurisdiction to resolve the dispute concerning the basement suite. The dispute before me is whether the Notice to End Tenancy should be upheld or cancelled.

The Notice to End Tenancy is on a Notice to End Tenancy produced in 2004 and is no longer the approved form for ending a tenancy for unpaid rent. While an old version of a Notice may be enforced where the information does not prejudice the tenant, I find the Notice is flawed for the following reasons.

The Notice is addressed to the tenant in Room 6 yet the Notice instructs the tenant to vacate two units: Room 6 and the basement suite. A Notice to End Tenancy must be pertain to one rental unit and cannot be used for multiple units.

The Notice also requires the tenant to pay a \$375.00 security deposit in the section provided for unpaid rent. A *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* must be used unpaid rent and utilities only. It cannot be used to require payment of a security deposit. Failure to pay a security deposit is grounds to end the tenancy for cause and the appropriate *1 Month Notice to End Tenancy for Cause* must be used.

In light of the above, I find the Notice to End Tenancy issued by the landlord on January 11, 2011 to be invalid and of no effect on the tenancy.

I trust this decision conveys to the parties that there is no tenancy for Room 6 but there was a tenancy formed for the basement unit. The landlord is at liberty to issue appropriate Notices, in the approved form, to the tenant for the basement unit. The parties are also at liberty to make subsequent applications for dispute resolution pertaining to the basement unit.

Conclusion

The Notice to End Tenancy was found to be invalid and has been 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: February 04, 2011.

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Residential Tenancy Branch