



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes CNC, CNR, MNDC, OLC, FF

### Introduction

This matter dealt with an application by the tenants to cancel Notices to End Tenancy for cause and to cancel Notices to End Tenancy for Unpaid Rent, for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to comply with the *Act*, regulations or tenancy agreement and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent by registered mail to the landlord on January 13, 2011. The landlord was deemed to be served the hearing documents on January 18, 2011 the fifth day after they were mailed as per section 90(a) of the *Act*. Both Parties confirmed receipt of the other Parties evidence and confirmed that they had opportunity to review it.

Both Parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Preliminary Issues

The tenants previously filed an application to cancel some of the Notices to End Tenancy and a hearing took place on December 14, 2010. At this hearing the tenants were successful as the landlord had failed to provide sufficient evidence to warrant an end to the tenancy. The landlord re-served the tenants with Notices to End Tenancy again and made an application seeking an Order of Possession.

A hearing was scheduled for January, 2011 but the landlord cancelled this hearing before it commenced. The landlord has now served the tenants with additional 10 Day Notices and One Month Notices and it is these Notices I will deal with at this hearing.

Issue(s) to be Decided

- Are the tenants entitled to cancel the Notice to End Tenancy for cause?
- Are the tenants entitled to cancel the Notice to End Tenancy for unpaid rent?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

Both Parties agree that this tenancy started on July 01, 2010. An original tenancy agreement was in place which was then re-written the following day, with the agreement of both Parties, to show an increase in rent to \$1,200.00 per month including utilities. Rent is due on this unit on the first day of each month. The tenants paid a security deposit of \$600.00 and a pet deposit of \$25.00 on June 26, 2010. Both parties also agree that the upper unit was also rented out and a tenancy agreement was in place which identifies the female tenant and another male tenant as tenants of this unit at a monthly rent of \$800.00 due on the first of each month including utilities. The female tenant states she was not a tenant in this upstairs unit but had just co-signed this tenancy agreement as the tenant was mentally disabled.

The landlord testifies that the whole house was rented as one unit originally, but agrees she did have a separate tenancy agreement for the upstairs unit and the downstairs tenants collected rent for this unit and paid it on behalf of the upstairs tenant. This upstairs tenant moved out in October, 2010 and new tenants moved into the upstairs unit in November, 2010. The landlord also agrees that the rent for this unit was lowered to \$550.00 in August, 2010.

The landlord testifies that the tenants were continually late with their rent and many of their rent checks in 2010 were returned by the bank as there were insufficient funds available to honour them (NSF). The landlord states she served the tenants with a total of five 10 Day Notices between August, 2010 and January, 2011. The landlord testifies that the amount owed on these notices includes rent for both units, when that was applicable, as the female tenant was on both tenancy agreements. The landlord seeks to deal with the 10 Day Notice issued on January 08, 2011. This Notice states the tenants owe \$4,050.00 in unpaid rent and has an effective date of January 18, 2010.

The landlord states the tenants made some rent payments after the 10 Day Notices had been issued which were outside the five day time frame and these payments were accepted for use and occupancy only and did not reinstate the tenancy. The landlord states at this time the tenants owe rent for the downstairs unit of \$681.14 and the rent of \$550.00 for the upstairs unit.

The landlord testifies that she has also served the tenants with five One Month Notices to End Tenancy for cause served on the tenants between November, 2010 and January, 2011. The landlord seeks only to deal with the One Month notice dated January 08, 2011 with an effective date of March 01, 2011. The reason given on this Notice is that the tenants are repeatedly late paying rent. The landlord states that the Notices were served for all of the tenants including the tenant residing in the upstairs unit.

The landlord testifies that the tenants often paid their rent by cheque and seven of these cheques were returned NSF. The landlord states the tenants have been late with their rent on four separate months in 2010. The landlord states she allowed the tenants to change the date rent was owed for the upstairs unit from the first of the month to the 15<sup>th</sup> of each month.

The landlord has requested an Order of Possession effective on March 01, 2011.

The female tenant disputes the landlords claims she was a tenant in the upstairs unit. She claims she simply co-signed this tenancy agreement to help the other tenant out but he was responsible for his own rent and the two units were separate units with separate tenancy agreements. The tenants also dispute that they owe rent. The tenant's testify that they have made additional cash payments towards their rent arrears of \$300.00 in September, 2010 and

\$450.00 on October 24, 2010 and this was paid in cash but the landlord did not provide them with receipts. The tenant has provided an e-mail from the landlord in which she states she forgot to give them a receipt. The female tenant states she was not responsible for the rent for the upstairs unit but when the tenant moved out in October she paid his rent for that month of \$550.00.

The tenant testifies that due to a bank error her cheques were returned by the bank. She has provided a letter from the bank stating that this was their error and they would reimburse the tenant and landlord for any bank charges incurred. The tenant also argues that she was not always late with her rent. The tenant's seek to have all the Notices cancelled.

The tenants seek a Monetary Order for compensation for having to take time to collect numerous registered mails from the landlord for all the Notices served. The tenants also seek compensation for time off work to attend the landlords hearing held in January, 2011 because she did not inform them that she had cancelled the hearing. The tenant states all this stress caused them to lose their quiet enjoyment of their rental unit. The tenant states on one occasion the landlord sent them a Notice of Entry for an electrician to attend the unit to carry out some work. The tenant states they rearranged the time for this with the landlord but she did not attend with the electrician and her husband had to come home from work to let the electrician into their unit. The female tenant states her husband earns an hourly rate of \$50.00 and she earns an hourly rate of \$32.00. The tenants seek a total sum of compensation of \$300.00.

The landlord states she did forget to tell the tenant that she had cancelled the hearing for January, 2011 and did forget to give the electrician a key to get into their unit to carry out work ordered by the City.

The landlord states the tenants did not give her any other cash payments other than the ones documented on her rent ledger and as shown as payments into her bank account (bank statements provided). The landlord states she was not in town on the date the tenant alleges she gave her additional cash payments and if this was the case the tenant would have had to pay the cash into the landlords' bank account and there would be a record of this. The landlord testifies the e-mail from her to the tenants concerning the receipt was sent with regard to the \$450.00 cash payment the tenants made on October 24, 2010. A receipt was later provided and

her bank statements show this amount being paid in by the landlord on October 26, 2010. This is a separate amount to the amount the tenants claims to have paid again in cash.

The tenants seek an Order for the landlord to comply with the *Act* and ensure the tenants can have peaceful enjoyment of their rental unit without constant harassment of Notices to End Tenancy.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both Parties. With regard to the One Month Notices to End Tenancy and the 10 Day Notices to End Tenancy, I find with all the Notices that the address on the Notices is for the house and does not specify individual units within the house with the exception of one, one Month notice dated November 08, 2010. The landlord argues that the house was rented originally as one house however she has separate tenancy agreements in place for the upper unit and the lower unit. Consequently, as the landlord has failed to identify which unit the Notices apply for and fail to show what rent is outstanding for individual units at the time the notices were issued the Notices are invalid and are therefore cancelled.

The One Notice that does identify the upper unit only named the female tenant. However, as this is dated November 08, 2010 and the landlord testifies that new tenants moved into the unit in November, 2010 this Notice is also invalid and is therefore cancelled.

With regard to the tenants application for compensation for having to take time off work to deal with the collection of registered mails from the landlord, time off to attend a hearing later cancelled by the landlord and time off to let the electrician into their unit; In this matter the tenants have claimed that they earn \$50.00 and \$32.00 per hour however they have not provided any evidence to show what they earn or how many hours of work they lost in time off to defend themselves against the landlords claims or to let in an electrician. When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy

agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

The tenants have claimed the sum of \$300.00 in compensation but it is my decision that they have not met the burden of proof in this matter and this section of their claim is dismissed without leave to reapply.

With regard to the tenants claim for an Order for the landlord to comply with the *Act* with regard to their loss of peace and quiet enjoyment; the tenants alleged that the landlords frequent notices to end tenancy are a breach of their right to quiet enjoyment. However in a similar case in the supreme court held on July 26 1996 it was held that attempts by a landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as a landlord believes he has reason to end the tenancy, he can make that assertion “frequently, emphatically and even rudely” and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy would be to dispute a Notice when given.

In light of this I find the tenants application for an Order for the landlord to comply with the *Act* is dismissed without leave to reapply.

The landlord is at liberty to re-serve the tenants with another Notice to End Tenancy in line with section 46 and 47 but any further Notices must comply with section 52(b) of the *Act* with regard to the form and content of the Notice.

### Conclusion

The tenant's application is allowed. The one Month Notices to End Tenancy for Cause and the 10 Day Notices to End Tenancy for unpaid rent served up to and including the Notices dated January 07 and January 08, 2011 are cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notices, they are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The remainder of the tenant's application is dismissed without leave to reapply.

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 11, 2011.

---

Residential Tenancy Branch