



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy that was given for non-payment of rent, and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The tenants failed to pay the full rent for February 2011 and as a result the landlord served a Notice to End Tenancy for non-payment of rent on February 25, 2011.

The applicants testified that:

- On February 14, 2011 there was an attempted break-in at a rental unit and bear spray was sprayed under the door.
- As a result of the attempted break-in she called the police, and they had to break-in the door to gain entry to the rental unit.

- Due to the toxic bear spray and damaged door they were not able to stay at the rental unit.
- The landlord did not allow them access back into the rental unit until February 26, 2011.

Therefore they believe that they should not have to pay for 12 days rent for a total of \$570.52, leaving only \$171.48 outstanding for February 2011.

The landlord testified that:

- There was a police incident at the rental unit and the police did break down the door.
- The tenants were not allowed to stay at the rental unit until the toxic bear spray was removed and the door was replaced.
- This work was done as soon as possible and the key was given to the tenants as soon as possible.
- The tenants did not have the right to withhold the rent during this time period, and that is why a Notice to End Tenancy was given.
- The tenants still owe \$750.00 for the month of February 2011, and they now also owe the full March 2011 rent of \$1350.00, for a total of \$2100.00.

The landlord therefore requested the Notice to End Tenancy be upheld and that an Order of Possession be issued for one week from today.

In response to the landlord's testimony the tenants testified that:

- The landlord had told them to withhold the remainder of the rent.
- When they contacted the Residential Tenancy Branch they were told not to pay any rent until this dispute resolution was concluded.

In response to the tenant's further testimony the landlord testified that:

- He never told the tenants not to pay the rent.

### Analysis

It is my decision that the tenants did not have the right to withhold the rent for the month of February 2011, and they have not met the burden of proving that the landlord told them not to pay the rent.

The tenants do not have the right to unilaterally withhold the rent unless they have an order from a Dispute Resolution Officer allowing them to do so, or, in limited circumstances, where they have had to pay for emergency repairs.

Further I also find it very unlikely that anyone at the Residential Tenancy Branch would have advised the tenants not to pay any further rent, and therefore I believe the tenants must have misunderstood the information they received.

Since the tenants did not have the right to withhold the rent, the landlord's Notice to End Tenancy is a valid notice and I will not set it aside.

### Conclusion

The tenant's application is dismissed in full without leave to reapply, and at the request of the landlord have issued an Order of Possession for 1 p.m. on April 7, 2011.

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: March 31, 2011.

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Residential Tenancy Branch