



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      O, FF

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution, seeking an order that the tenancy has ended, to deal with a 10 day Notice to End Tenancy issued by the Landlord to the Tenants, and to recover the filing fee for the Application.

The Tenants had incorrectly completed their names in the Application. As the Landlord was aware of the Tenants legal names and suffered no prejudice by their error, and pursuant to section 64 of the Act, I amended the Application and style of cause accordingly.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all 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.

I note that the Landlord was cautioned three times regarding inappropriate behaviour, foul language, and interruptions during the hearing. Following the fourth instance of foul language and interruption, the Landlord's telephone was muted. The Landlord could hear the proceedings, but could not interrupt. At the appropriate time, the Landlord's phone was unmuted and the Landlord was provided the opportunity to present her testimony and evidence. I also note the Landlord hung up (disconnected), from the hearing prior to the conclusion of the proceedings.

### Issue(s) to be Decided

When and how did the tenancy end?

Is the Notice to End Tenancy valid?

### Background and Evidence

The Tenant was renting a room from the Landlord, who was not the owner of the property. The Landlord was renting under a tenancy agreement with the owner of the property and apparently the Tenant was added to this agreement. Neither party provided a copy of the tenancy agreement in evidence.

The Tenant is a minor. Under section 3 of the Act a minor may enter into a tenancy agreement and it is enforceable under the Act, despite section 19 of the *Infants Act*.

The Tenant's mother (who was her advocate at the hearing), became concerned about her well being at the rental unit and informed her daughter she would have to move out of the rental unit or she would cease helping her with rent payments. Apparently the Tenant was in a common law relationship with the Landlord's son, who also resided at the rental unit.

According to the testimony of the Tenant's mother, the Tenant verbally informed the Landlord on January 20, 2011, that she was vacating the rental unit. According to the testimony of the Tenant and her mother, they also paid the Landlord for one month of rent in lieu of a written Notice to End tenancy. They testified they made it clear to the Landlord that the February rent was in lieu of written Notice. The Tenant testified that she vacated the rental unit on or about January 20, 2011.

The Landlord testified that this was a month to month tenancy, and the Tenant's monthly rent was \$450.00. The Landlord acknowledged that the Tenant had paid her one extra month of rent, for February, and that the Tenant had vacated the rental unit at the end of January 2011. The Landlord acknowledged that the Tenant and her mother informed her that she was being paid for February for one month of rent in lieu of written Notice.

According to her testimony, the Landlord vacated the rental property on March 5, 2011, and moved into a different rental property.

Nevertheless, the Landlord issued the Tenant a 10 day Notice to End Tenancy in March, as the Landlord believed she was entitled to another month of rent from the Tenant. The Landlord argued that since the Tenant did not give her written Notice she should get this additional rent. The Landlord was also attempting to have the Tenant's mother pay for the Tenant's March rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find that the tenancy ended on February 28, 2011.

I find that in these particular circumstances, the Landlord accepted the end of the tenancy as being February 28, 2011, when she accepted the one month of rent in lieu of written Notice. Had the Landlord made an Application for a monetary order herself, based on the Tenant's failure to provide the written Notice, all the Landlord would have been entitled to would have been rent for the month of February, which she had already received. Therefore, I find that the Landlord accepted the verbal end of tenancy with payment of one month of rent in lieu of written Notice and the tenancy ended on February 28, 2011.

I also find that the 10 day Notice to End Tenancy issued in March is not valid. The tenancy ended in February as described above, and furthermore, once the Landlord left the subject rental unit, the tenancy ceased to exist between the Landlord and this Tenant. In other words, there was no valid tenancy agreement between the Landlord and Tenant following February 28 of 2011.

Due to the nature of this Application, I make no award for the filing fee.

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: April 19, 2011.

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Residential Tenancy Branch