



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing was reconvened as a result of the Tenant's successful Request for a Review Hearing to deal with the Direct Request Application for Dispute Resolution by the Landlords, who had been granted an order of possession, dated May 9, 2011, by the Residential Tenancy Branch through that Application. The Landlords did not apply for a monetary order.

The Tenant filed an application for a Review Hearing, which alleged that the Decision of May 9, 2011, was based upon a party not able to attend the original hearing because of circumstances that could not be anticipated and were beyond the party's control; a party has new and relevant evidence that was not available at the time of the original hearing; and a party has evidence that the director's decision or order was obtained by fraud.

In a Decision of May 16, 2011, the Dispute Resolution Officer (DRO) granted the Tenant's application and suspended the Decision and Order of May 9, 2011, to allow a participatory hearing on the original Landlord's Application. The Decision of the DRO allowed the Tenant's "Application for a Review on the basis that a party has new and relevant evidence that was not available at the time of the original hearing."

The Tenant, the Landlords and their witnesses appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

### Issue(s) to be Decided

Did the Landlord provide sufficient evidence to determine if the 10 Day Notice to End Tenancy was effective?

Has the Tenant breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the Landlord to an Order of Possession?

### Background and Evidence

This fixed term tenancy, incorrectly stated as a month to month tenancy, began on November 19, 2010, was to end on July 31, 2012, monthly rent is \$1,100.00, and a security deposit of \$550.00 was paid by the Tenant on November 19, 2010.

The Landlords testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), via personal delivery on April 16, 2011, listing the amount of unpaid rent as of April 1, 2011 in the amount of \$1,100.00. The Tenant did not dispute service of the Notice.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice. I note the move out effective date indicated on the Notice is April 26, 2011.

The Landlord testified, as did the Tenant, the Tenant made a rent payment of \$700.00 on April 15, 2011, and owed the amount of \$400.00 at the time the Notice was issued and not \$1,100.00. The female Landlord submitted that the figure used was a mistake.

The Landlord's relevant evidence included the Notice, the tenancy agreement, proof of service of the Notice of Hearing and of the Notice, a written summary of evidence, illegible copies of rent payment receipts, several notices to end tenancy in the incorrect form, and a copy of the \$700.00 rent payment, dated April 15, 2011.

As part of the Application for Review Hearing, the Tenant supplied into relevant evidence a copy of a rent receipt, dated April 15, 2011, in the amount of \$700.00.

The Tenant testified that she attempted to pay the Landlords the balance of the rent for April, \$400.00, and then afterwards, for the rent for May 2011, but that the Landlords refused her payment.

### Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony **relevant** to the issues and findings in this matter are described in this Decision.

In the circumstances before me, the Landlords admitted that by the time the Notice was issued on April 16, 2011, the amount of rent the Tenant owed was significantly less than the amount listed, due to the Tenant's payment of \$700.00 on April 15, 2011.

The purpose of serving documents under the *Act* is to notify the person being served of their breach and notification of their rights under the *Act* in response. The Landlords are seeking to end the tenancy due to this breach; however, the Landlords have the burden of proving that the Tenant was served with the 10 day Notice to End Tenancy which meets the form, content, and service under sections 52 and 89 of the *Residential Tenancy Act*.

I find that the 10 Day Notice issued by the Landlords does not meet the requirements of the *Act* and is not enforceable as the rent listed as being due is invalid.

Therefore I find the Notice listing the Tenant's unpaid rent to be unsubstantiated and that the Landlords have not proven the 10 Day Notice to End Tenancy issued April 16, 2011, was valid.

### Conclusion

Based on the aforementioned lack of proof of overdue rent and aforementioned discrepancies, I find the 10 Day Notice to End Tenancy does not meet the form, content and requirements of section 46 of the *Act*. Therefore, I find the 10 Day Notice to End Tenancy is invalid and of no force or effect. Having found the 10 Day Notice issued April 16, 2011, to be invalid, I hereby **dismiss** the Landlords' application, **without leave to reapply**, with the effect that the tenancy continues until otherwise ended under the tenancy agreement or Residential Tenancy Act.

I make no finding on what amount, if any, in unpaid rent, the Tenant may owe.

The Tenant is cautioned that rent is due and payable in full on the 1<sup>st</sup> day of each month.

While I make no findings on the merits of the Tenant's allegation that her rent payment was declined by the Landlords, I direct any future rent payments from the Tenant be accepted forthwith by the Landlord or any Agents appointed by the owner and to issue a receipt for each payment.

I decline the Landlords' request for assistance in collecting rent owed from the Tenant as well as the request for advice as to the Landlords' next course of action. I did,

however, inform both parties information may be sought from the Residential Tenancy Branch.

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: June 09, 2011.

---

Residential Tenancy Branch