



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, O

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by both tenants and their agent/occupant daughter and by the landlord's agents.

During the hearing, I accepted the tenants' amendment to the application to resolve the matter of the amount of rent to be paid for this tenancy.

I note here the landlord's agent did not request an order of possession should the tenant fail to be successful in their application to cancel the notice to end tenancy.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and to determine the monthly value of the tenancy, pursuant to Sections 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

This tenancy began when the tenants moved into a new rental unit in the residential property on April 1, 2011. The tenants are resident caretakers under the employment of the landlord and provided with a taxable benefit allowance that credits towards their monthly rent amount.

The landlord asserts the market value rent for the dispute address is \$2,800.00 and that after the tenants employment allowance is considered the tenants owe \$1,600.00 per month beginning April 1, 2011.

The tenants submit they had agreed to \$1,000.00 per month with a previous property manager who is no longer available for this hearing. The tenants assert the agreement was made verbally on March 2, 2011 with the previous property manager in the lobby of the residential property. As such, the tenants have provided the landlord with cheques in the amount of \$1,000.00 each for April, May and June 2011.

The landlord's witness testified that she was present at the time the male tenant and the property manager discussed the new unit and rent amount. She testified that the property manager clearly outlined the rent to be \$1,600.00 and that the male tenant agreed to this amount.

The male tenant contends that the witness had been talking with other tenants during the conversation and was not a party to the entire conversation and could not be relied upon to recall the full discussion he had with the property manager. The landlord's witness testified that she may have smiled to tenants passing by but she did not engage in conversation with other tenants until the discussion was over and the property manager had left to attend another meeting.

The landlord's agent testified that the landlord did receive three cheques of \$1,000.00 each from the tenants for the months of April, May and June 2011 but that the landlord has not accepted these and has not cashed any of the cheques but is still holding them.

Despite ongoing dialogue and some correspondence between the parties, to date, the tenants have not paid the additional \$600.00 per month for each of the three months noted.

On June 2, 2011 the landlord issued and served, personally, a 10 Day Notice to End Tenancy for Unpaid Rent with an effective vacancy date of June 12, 2011 due to \$4,800.00 in unpaid rent. The tenants filed their application to dispute the notice on June 6, 2011.

The parties discussed some possibilities to settle the dispute with an agreement between them but could not come to a settlement that both parties agreed to.

### Analysis

Both parties provided substantial evidence and testimony regarding how they felt the amount of rent should be determined, however, I find *how* either party determined what they thought to be a fair rental amount to be less relevant than *what* the parties actually agreed upon.

In the case of verbal agreements, I find where verbal terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

In addition, from the evidence and testimony provided it is clear the parties have different interpretations as to the agreed upon amount of rent for this rental unit. It is incumbent upon the party making the claim to provide sufficient evidence to support their position.

In the case before me, based on the landlord's submissions of the market value of rental units and the testimony of the landlord's witness and the lack of any corroborating evidence of the tenants' position, I find, on the balance of probabilities, the agreed upon rent was \$1,600.00 per month.

As to the notice to end tenancy, Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant a notice to end the tenancy 10 days after the notice is received by the tenant.

Section 46 subsection 3 states that a notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

Section 46 also requires the notice given must be in compliance with Section 52 of the *Act* that outlines, among other things, the notice must state the grounds for ending the tenancy.

In the notice issued by the landlord on June 2, 2011, the landlord asserts the tenant owes the landlord \$4,800.00. Despite the landlord's testimony that they did not accept, the amount of rent paid by the tenants, the landlord has received \$3,000.00 from the tenant.

As such, and in conjunction with my finding on the amount of rent, on June 2, 2011 the tenants are allowed to deduct the \$3,000.00 from the amount listed on the notice, which renders the notice to be ineffective, pursuant to Section 46(3).

### Conclusion

Based on the above, I find the tenants are entitled to cancel the 10 Day Notice to End Tenancy for Unpaid Rent issued on June 2, 2011. The landlord remains at liberty to issue a new 10 Day Notice to End Tenancy if any amount of rent remains unpaid.

I further find the tenancy to be in full force and effect with the monthly rental amount of \$1,600.00 until such time as the tenancy ends in accordance with the *Act* or the amount of rent may be increased in accordance with the *Act*.

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 27, 2011.

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Residential Tenancy Branch