



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNDC, OLC, RP, FF

Introduction

This Hearing was scheduled to consider with the Tenant's application to cancel a *10 Day Notice to End Tenancy for Unpaid Rent* (the Notice); for compensation for damage loss under the Residential Tenancy Act (the "Act"), regulation or tenancy agreement; for Orders that the Landlord comply with the Act, regulation or tenancy agreement and make repairs to the rental unit; and for recovery of the cost of the filing fee from the Landlord.

Both parties appeared at the hearing, gave affirmed testimony and had an opportunity to be heard and respond to other party's submissions.

It was established that the Tenants served the Landlord with the Notice of Hearing documents, by registered mail sent May 18, 2011.

The Tenant testified that he mailed copies of his documentary package to the Landlord, via registered mail, on May 30, 2011. Documents served in this manner are deemed to be received 5 days after mailing (June 4, 2011). The Landlord testified that she gave another tenant in the rental unit copies of her documentary evidence to serve upon the Tenant and that service was affected on June 3, 2011 in person. The Tenant stated that he received the documents on June 3, 2011, but that they were left in the door of the rental unit and not served personally. Documents must be provided to the Residential Tenancy Branch as soon as possible, but in any event at least 5 clear days before the Hearing date. Neither party provided the other with copies of their

documents within the allowable time frame. I invited the parties to provide verbal testimony with respect to the contents of the documentary evidence.

Preliminary Matter

The Tenant has applied for a number of different orders and relief. Matters must be related in order to be heard on the same application. I find that not all the claims on the Tenant's application are sufficiently related to the main issue to be dealt with together. Therefore, pursuant to the provisions of Rule 2.3 of the Rules of Procedure, I will deal with the Tenant's application to cancel the Notice and for recovery of the filing fee from the Landlord. The remainder of the Tenant's application is dismissed **with leave to reapply**.

Issue to be Decided

Should the Notice issued May 11, 2011, be cancelled?

Background and Evidence

The parties were in agreement to the following facts:

- The rental unit is the basement suite of a house. The Landlord lives on the main floor.
- The parties entered into a tenancy agreement on January 1, 2011. Monthly rent is \$650.00. There was no security deposit required at the beginning of the tenancy. Rent does not include utilities.
- The parties agreed that the Tenant could perform work in lieu of rent.

The Landlord stated rent is due on the first day of each month. The Landlord testified that the Tenant owed \$75.00 in rent for the month of February, and \$650.00 for each of the months of March, April and May, 2011. She stated that provided some work and

told the Landlord that the value of the work was \$1,709.00. The Landlord testified that the Tenant also owed his share of utilities for the months of March, April and May, 2011. The Landlord stated that she provided the Tenant with written demand for the utility payment by posting the bill on the fridge in a common area.

The Landlord testified the Tenant owes the following for rent and utilities:

February rent owed	\$75.00
March rent owed	\$650.00
April rent owed	\$650.00
May rent owed	\$650.00
May utilities owed	\$50.00
March utilities owed	\$92.72
April utilities owed	\$67.89

The Landlord testified that she subtracted \$1,709.00 (the amount the Tenant claimed she owed him) from the figures set out above when determining the amount of rent owed for May 1, 2011.

The Tenant testified that the Landlord did not give him receipts for rent paid in cash. The Tenant testified that he and the Landlord had a verbal agreement that he could pay rent every two weeks until he got back on his feet after being ill. He stated that he gave the Landlord \$320.00 cash for May's rent but she returned it three days later and gave him the Notice to End Tenancy.

Analysis

Section 46(6) of the Act provides:

46(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section.

In this case, the Landlord did not give the Tenant written demand for payment of the utilities at least 30 days before issuing the Notice and therefore she may not treat the unpaid utilities as unpaid rent. It is also important to note that written demand was not provided in accordance with the provisions of Section 88 of the Act.

Therefore, I calculate unpaid rent as at the date of the notice to be \$316.00, calculated as follows:

Unpaid rent for February	\$75.00
Unpaid rent for March	\$650.00
Unpaid rent for April	\$650.00
Unpaid rent for May	<u>\$650.00</u>
SUBTOTAL	\$2,025.00
Less amount Landlord owes Tenant for work provided	<u>-\$1,709.00</u>
TOTAL RENT OWED AS AT May 11, 2011	\$316.00

On or about May 8, 2011, the Tenant paid the Landlord \$320.00 cash for rent, but the Landlord refused to accept it. Therefore, I grant the Tenant's application to cancel the Notice. The Tenancy remains in full force and effect until it ends in accordance with the provisions of the Act.

I hereby order the Tenant to provide the Landlord with **\$316.00** immediately. The Tenant will give the Landlord the **\$316.00** with a witness present. The Landlord is directed to provide the Tenant with receipts for rent paid in cash, in compliance with Section 26(2) of the Act.

The Tenant has been successful in his application and is entitled to recover the cost of the filing fee from the Landlord. Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from a subsequent month's rent in satisfaction of this award and the Landlord must consider the rent paid in full.

Conclusion

The Notice to End Tenancy issued May 11, 2011, is cancelled. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant is hereby ordered to provide the Landlord with rent for the month of May in the amount of **\$316.00** forthwith. The Landlord is ordered to provide the Tenant with a receipt for rent paid in cash.

The Tenant may deduct \$50.00 from future rent due to the Landlord.

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 08, 2011.

Residential Tenancy Branch