



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC, MNR, MNDC, FF

### **Introduction**

This hearing dealt with the Tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice); for a Monetary Order for the cost of emergency repairs and compensation for damage or loss; and recovery of the filing fee.

### **Preliminary Matters**

This matter was originally heard on June 15, 2011. During the initial Hearing, the Tenant submitted that he had a financial interest in the property arising from an Offer to Purchase and the fact that he had paid for repairs to the rental unit and another suite in the rental property on the understanding that he would be purchasing the rental property. The Landlords' agent denied that the Tenant had any financial interest in the property. The matter was adjourned to June 23, 2011, in order for the parties to provide me with documentary evidence with respect to whether or not the Tenant had a financial interest in the property. I explained to the parties that if the Tenants submission was found to be true, I would have no jurisdiction to hear the matter.

The Tenant did not provide sufficient evidence that he has a financial interest in the rental property, such as a copy of an Option to Purchase, or proof that a portion of his rent was to go towards a down payment on the property, or proof that he paid a down payment to the Landlords. Therefore, I accepted jurisdiction over this matter and the Hearing proceeded.

Initially, the Tenant had only applied to cancel the Notice and recover the filing fee. On June 15, 2011, the Tenant's application was amended to include a claim for a monetary award in the amount of \$21,164.15. The original Hearing was not adjourned to allow an amendment of the Tenant's initial application and the Landlords were not provided with sufficient time to prepare for this additional claim. The Residential Tenancy Rules of Procedure, Rule 2.3, states that for disputes to be combined on an application they must be related. I find that that the monetary claims on the Tenant's application are not sufficiently related to the main issue, which is to cancel the Notice. For these reasons, I dismissed the Tenant's application for a Monetary Order **with leave to reapply**.

### **Issue to be Decided**

Should the Notice issued May 15, 2011, be cancelled?

### **Background and Evidence**

The rental unit is one of two suites in a house. The Landlords live next door. The tenancy started on May 15, 2010. A copy of the tenancy agreement was provided in evidence. Monthly rent is \$1,250.00 due on the 15<sup>th</sup> day of each month.

The Landlords have alleged the following reasons on the Notice for ending the tenancy:

Tenant is repeatedly late paying rent.

Tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Tenant has engaged in **illegal** activity that has, or is likely to:

- Adversely affect the quiet enjoyment, security, safety or well-being of another occupant or the landlord;
- Jeopardize a lawful right or interest of another occupant or the landlord.

Tenant knowingly gave false information to prospective tenant or purchase of the rental unit or property.

(emphasis added)

The Landlords' agent testified that the Tenant was late paying rent, as follows:

October, 2010, 3 days late;

November, 2010, 2 days late;

December, 2010, 4 days late;

January, 2011, 3 days late;

February, 2011, 2 days late;

March, 2011, 10 days late;

April, 2011, paid within 5 days of being served a Notice to End Tenancy for  
Unpaid Rent.

The Tenant denied ever being late paying the rent and stated that often rent is paid a couple days before it is due. The Tenant testified that rent is paid in cash, because the Landlords will not accept cheques, and that the Landlords will not provide receipts.

The Landlord's agent confirmed that the Landlords do not provide receipts for rent paid in cash.

The Landlord's agent testified that the Tenant is harassing the other tenant in the rental property. A letter from the other tenant was provided in evidence.

The Tenant testified that he is the property manager for the Landlords and that he was asked by the Landlords to keep an eye on the other rental unit. The Tenant provided a copy of a letter dated March 1, 2011, in support of his claim that he is an agent for the Landlords. The Tenant stated that he has made repairs to the other rental unit on the Landlords' behalf and collected rent from the other tenants in his role as property manager. The Tenant testified that the other tenant was not paying her share of utilities and the Tenant received a notice that the utilities would be cut off, so the Tenant had to cover the total utility bill.

The Landlords' agent stated that the Tenant is not the property manager and has no right to act for the Landlords. The Landlords' agent agreed that the male Landlord signed the letter dated March 1, 2011, but stated that he was tricked into signing it. The Landlords' agent stated that any repairs to the other rental unit that the Tenant paid for, when provided with a receipt, were reimbursed to the Tenant by a deduction from rent. He stated that it was convenient for the Landlords and the other tenant that the Tenant collect rent from the other tenant and provide it to the Landlords. With respect to utilities, the Landlords' agent stated that the understanding was that the Tenant paid for all of the utilities and the other tenant reimbursed the Tenant for 25% of the bill. The Landlords' agent submitted that payment of the utilities were between the Tenant and the other tenant and not the Landlords' responsibility.

The Tenant denied being reimbursed for his out-of-pocket expenses in maintaining the other rental unit.

The Landlords' agent submitted that the Tenant was illegally representing himself to be the property manager to the other tenant and that this was adversely affecting the quiet enjoyment of the other tenant and jeopardizing the Landlords' lawful right as a landlord.

### **Analysis**

In a situation where a tenant seeks to cancel a Notice to End Tenancy, the landlord is required to establish, on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice to End Tenancy.

Section 26(2) of the Act requires a landlord to provide receipts for rent paid in cash. The Landlords did not comply with Section 26(2) of the Act and therefore have provided insufficient evidence that the Tenant is repeatedly late paying rent. The Landlords are hereby ordered to comply with Section 26(2) of the Act and provide receipts for rent paid in cash.

I find that the Landlord has not provided sufficient evidence that the Tenant is engaging in **illegal** activity and this reason for ending the tenancy is therefore unproven.

There was no evidence that the Tenant had given misinformation to a prospective tenant or a prospective purchaser of the rental unit and therefore this reason for ending the tenancy is unproven.

Based on the verbal testimony and documentary evidence provided by both parties, I find that the Tenant acted on behalf of the Landlords when he accepted the other tenant's rent, made repairs to the other tenant's suite, and wrote to the other tenant on March 1, 2011, with respect to parking and unpaid utilities. The Landlords now seek to the end tenancy because the Tenant behaved as a property manager with the Landlords' encouragement. The male Landlord signed the March 1, 2011, letter and the Landlords' agent stated that the Landlords were happy with the "convenience" of having the Tenant deal with the other tenant on their behalf. The Landlords have not provided sufficient evidence that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord or significantly interfered with or unreasonably disturbed another occupant or the Landlord.

The Landlords are hereby warned that they are responsible for collecting the rent from the other tenant, and for making required repairs to both of the rental units. The Tenant was warned that he is a tenant only and not the property manager of the rental property and to govern himself accordingly.

The Landlords have failed to provide sufficient cause to end this tenancy and I grant the Tenant's application to cancel the Notice. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Tenant has been successful in his application and is entitled to recover the initial filing fee of \$50.00 from the Landlords. The Tenant may deduct \$50.00 from a

subsequent month's rent in satisfaction of this award and the Landlords must consider the rent paid in full.

### **Conclusion**

The Tenant's application for a Monetary Order is dismissed **with leave to reapply**.

The Landlords are hereby ordered to comply with Section 26(2) of the Act and provide receipts for rent paid in cash.

The Notice to End Tenancy issued May 15, 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 may deduct \$50.00 from future rent due to the Landlords.

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 23, 2011.

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Residential Tenancy Branch