



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, FF, O

### Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for Unpaid Rent, for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on June 17, 2011.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly sworn evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Are the tenants entitled to have the 10 Day Notice to End tenancy cancelled?
- Are the tenants entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this tenancy started on November 05, 2009. This started as a fixed term tenancy for one year and reverted to a month to month tenancy at the end of the fixed term. Rent for this unit is \$767.50 which is due on the last day of each month in advance. The landlord testifies that the tenants rent check for June was returned due to Insufficient funds (NSF). The landlord agrees the tenants paid the outstanding rent of \$767.50 plus a NSF fee of \$25.00 on June 11, 2011 by money order. The landlord states the tenants were served with a 10 Day Notice to End Tenancy for unpaid rent because they failed to pay a late fee of \$25.00. This Notice was served to the tenants by posting it to their door on June 16, 2011 and has an effective date of June 16, 2011.

The tenant attending testifies that they did not owe any rent when the 10 Day Notice was served upon them and seeks to cancel the Notice. The tenant states they were unaware that they had to pay both a late fee and an NSF fee. The tenant states the landlord wanted her to pay \$45.00 for the NSF fee but after seeking advice from RTB she was informed the most the landlord could charge her was \$25.00 so this is what she sent her with their rent payment.

The tenant testifies that she has suffered a loss of quiet enjoyment of her rental unit due to the landlords' harassment of her over this matter. She states she has received four phone calls before the 10 Day Notice was issued and two phone calls afterwards. She states the landlord has placed Post It notes on her door and two letters along with the 10 Day Notice to End Tenancy. The tenant states she has a chronic illness and is upset by the landlords' harassment. The tenant states the landlord has accused her of smoking pot in her house and keeping pot plants in her parking bay. The tenant states the landlord does not follow the *Residential Tenancy Act* and she seeks compensation of \$1,500.00 for the loss of quiet enjoyment.

The landlord declined to comment on these matters.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants request to cancel the 10 Day Notice to End Tenancy; A landlord is entitled to issue tenants with a 10 Day Notice to End Tenancy when rent or utilities are unpaid. In this matter I find the landlord issued the Notice after the tenants had paid the outstanding rent and an additional fee for the NSF cheque. A landlord is not entitled to issue a 10 Day Notice for any other outstanding payments but should seek recourse through filing an application for money owed or compensation for damage or loss. Consequently the 10 Day Notice to End Tenancy is set aside and the tenancy will continue.

With regard to the tenants claim for compensation of \$1,500.00 for the loss of quiet enjoyment and harassment by the landlord: I refer the tenants to a similar case dealt with in the Supreme Court of Whiffin v. Glass & Glass (July 26, 1999). In this case it was held that attempts by the landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that as long as a landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that the landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy would be to dispute the notice ending the tenancy once given. Consequently, in this matter I find the landlord is entitled to threaten eviction even if they are wrong. I further find that these attempts to warn the tenants about unpaid rent or any other alleged breaches of the tenancy agreement do not constitute harassment by the landlord. Consequently, the tenant's application for compensation due to the landlords' actions is dismissed.

### Conclusion

The tenant's application to cancel the 10 Day Notice to End Tenancy is allowed. The 10 Day Notice dated June 16, 2011 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover the **\$50.00**

filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is dismissed without leave to reapply.

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: July 13, 2011.

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Residential Tenancy Branch