



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This matter dealt with an application by the Tenants to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 11, 2011.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This month-to-month tenancy started on February 1, 2011. Economic rent for the rental unit is \$766.00 per month and when the Tenants are eligible for a subsidy, their rent is \$295.00 per month. Rent is due in advance on the 1<sup>st</sup> day of each month. The Parties also had an agreement whereby the Tenants would pay rent arrears for 2010 of \$509.00 in monthly instalments of \$50.00 commencing February 20, 2011. As of July 1, 2011, the Tenants had paid \$142.00, leaving a balance owing of \$367.00.

The Landlords claim that the Tenants failed to provide proof of their income that was requested of them (ie. income tax returns and bank statements for 2009 and 2010) and as a result, the Tenants' rent subsidy was revoked effective July 1, 2011 and their rent was increased to \$766.00 per month. The Tenants claim that they provided the Landlords with all of the relevant income documents.

The Parties agree that the Landlords served the Tenants on July 11, 2011 with a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities dated July 11, 2011 by posting it to the rental unit door. The Parties also agree that the Tenants made a payment of \$140.00 on July 11, 2011. The Landlords said they applied this payment to the Tenants' rent arrears for 2010 because the Tenants were behind in their payments. The Landlords said they noted on a receipt to the Tenants that this was the case and argued that a notation that showed it was for the period, July 1 – 31, was an error. The Tenants also made a payment of \$300.00 on August 3, 2011 which the Landlords refused to accept.

### Analysis

Section 46(4) of the Act says that within 5 days of receiving a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. The Tenants applied for dispute resolution because they argued that they should not have to pay the economic rent.

It is unnecessary to this Decision to determine whether the Landlords were entitled to charge the Tenants the full or economic rent. That is to say, even if I accept the Tenants' argument that the rent owing for July 2011 was \$295.00 (and I make no such finding) or that they made a partial payment on July 11, 2011 of \$140.00 for that month's rent, I find that the Tenants still failed to pay the full amount *they say was owed* within the 5 days granted under s. 46(4) of the Act (or by July 16, 2011).

However, it is a principle of common law that if a landlord accepts a partial rent payment within the 5 days granted under s. 46(4) of the Act, they may be deemed to have reinstated the tenancy (*see RTB Form #124, Re-instatement of Tenancies*). In this case, I find that there are a number of factors that indicate that the Landlords did not intend to reinstate this tenancy by accepting a partial payment of rent from the Tenants on July 11, 2011 and that the Tenants were aware of this. Firstly, the Landlords stated in a letter to the Tenants dated August 3, 2011 that the Tenants had not paid *any* rent for July 2011 or August 2011 and they refused to accept any payments from the Tenants after the 5 days granted under s. 46(4) of the Act. Secondly, the Tenants claimed at the hearing they believed the Landlords wanted to end their tenancy by doing such things as revoking their subsidy, serving them with a 2 Month Notice to End Tenancy and "harassing" them about a parking stall. Consequently, I find that the Tenants were also aware that the Landlords did not intend to revoke the 10 Day Notice or to reinstate the tenancy by accepting a partial rent payment on July 11, 2011.

As a result, I find that there are grounds for the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 11, 2011 and the Tenants' application to cancel it is dismissed without leave to reapply.

### Conclusion

The Tenants' application is dismissed without leave to reapply. The Landlords did not request any orders at the hearing. 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: August 16, 2011.

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Residential Tenancy Branch