



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, SS, FF

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is a request to cancel a Notice to End Tenancy that was given for non-payment rent, a request for an order for the landlord to comply with the Residential Tenancy Act, and a request for recovery of the \$50.00 filing fee.

### Background and Evidence

The applicant testified that:

- The landlord gave her a two month Notice to End Tenancy with an end of tenancy date of August 31, 2011.
- On July 2, 2011 she gave the landlord written notice to vacate earlier, on July 31, 2011.

- Since she is allowed to withhold her last month's rent if she is given a two month Notice to End Tenancy, she withheld the rent for the month of July 2011.
- July 4, 2011 the landlord gave her a 10 day Notice to End Tenancy for non-payment of rent.

The applicant is therefore requesting that the landlord comply with the Residential Tenancy Act and that the 10 day Notice to End Tenancy be cancelled. She is also requesting recovery of her filing fee.

The respondent testified that:

- She gave the tenant a two month Notice to End Tenancy for landlord use that ended the tenancy on August 31, 2011 and therefore she believed that August 2011 rent would be the 1 free month's rent.
- The tenant did give her notice on July 2, 2011 that she would be vacating at the end of July 2011.
- When the tenant withheld the rent for the month of July 2011 she believed that the tenant was doing this without the proper authority and therefore she gave the 10 day Notice to End Tenancy, on July 4, 2011.

### Analysis

When a landlord gives a tenant a Notice to End Tenancy for landlord use, the tenant has the right to withhold the final month's rent as compensation.

Further, when a tenant receives a Notice to End Tenancy for landlord use, the tenant has the right to give the landlord at least 10 days notice to end the tenancy on an earlier date.

In this case the tenant gave the landlord notice on July 2, 2011 to vacate on July 31, 2011, which is well more than the 10 days required.

When the tenant gives the landlord notice to end the tenancy earlier, it does not change the tenants right to withhold the final month's rent and therefore since this tenants final month of tenancy was now July 2011 the tenant did have the right to withhold the rent for that month.

Therefore had the tenant not already vacated the rental unit I would have cancelled the 10 day Notice to End Tenancy; however since she has vacated, an order to cancel the notice is no longer required.

I will however allow the tenants request for recovery of the filing fee.

### Conclusion

I have issued a monetary order in the amount of \$50.00.

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 08, 2011.

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Residential Tenancy Branch