



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNR, OPR, MNR FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated September 28, 2011 with effective date of October 9, 2011. The hearing was also convened to hear the landlord's application seeking an Order of Possession and Monetary Order based on the Ten Day Notice to End Tenancy for Unpaid Rent.

The parties appeared and gave testimony during the conference call.

### **Issue(s) to be Decided**

The issue to be determined based on the testimony and the evidence is: Should the Ten-Day Notice to End Tenancy for Unpaid Rent be cancelled, or should it be enforced with an Order of Possession issued to the landlord?

### **Background and Evidence**

The landlord testified that the tenancy began in March 2011 and the current rent was \$750.00. Submitted into evidence was a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent dated September 28, indicating that rental arrears of \$1,500.00 were owed. The tenant had submitted copies of bank deposit slips, but the landlord stated that this evidence was never served on the landlord.

The landlord testified that the parties had an arrangement for payment of the rent that required the tenant to deposit the rent payment directly into the landlord's account and then to keep the deposit slips and supply copies of them when requested to prove payment. The tenancy agreement was not in evidence, but apparently there was not a written term in the contract requiring that the payment be made in this manner. According to the landlord, this method was only used for the tenant's convenience. The landlord testified that she could not accurately track whether or not this tenant's payments were made, merely by looking at her bank records. The landlord testified that she required copies of the deposit slips, because her bank records did not identify which one of her tenants had made the various deposits.

The landlord testified that, after looking at her bank statement, she suspected that the tenant had not paid his rent for August and September 2011 and therefore felt it necessary to obtain the proof of payment from the tenant. The landlord testified that she and her manager made several attempts contact the tenant by phone, email, or messages left on his door, requesting copies of the deposit slips but the tenant did not respond. The landlord testified that the tenant's refusal to confirm that payment of rent was made, indicated to her that the tenant did not pay the rent. The landlord testified that a Ten Day Notice to End Tenancy for Unpaid Rent was issued and the tenant still did not furnish the proof of payment nor did the tenant respond to efforts by the landlord to contact the tenant to discuss this matter.

The landlord's witness, the building manager, confirmed that the tenant appeared to be avoiding the manager and the landlord. The witness testified that the tenant had only shown her one deposit receipt.

The tenant acknowledged that it was an accepted practice between the parties to deposit rent into the landlord's account. The tenant testified that it was never specifically stated that he must submit copies of each deposit slip to the landlord. However, he did retain copies to prove payment and was willing to give them to the landlord. The tenant testified that he had been unavailable for a period of time due to a catastrophic family situation. The tenant stated that he was more than willing to comply with any method of payment if there was no risk of the landlord wrongfully accusing him of nonpayment and trying to terminate his tenancy in the future, as occurred in this instance.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement. Although, the Act does not restrict method of payment, it provides that a landlord must give the tenant a receipt whenever the tenant pays the rent in cash.

I find that the parties had apparently agreed that the acceptable method of payment would be that the tenant deposits funds into the landlord's account. I find that, in order to avoid future misunderstandings of this nature, the tenant is henceforth required to deposit rent on, or before, the first day of each month, and to obtain a copy of the deposit slip verifying that the deposit was made, which the tenant must then place in the mailbox of the rental manager. I also find it appropriate to issue an order that the tenant provide the landlord with copies of past bank deposit slips proving payment of rent for August 2011, September 2011, October 2011 and November 2011.

In light of the above, I hereby grant the tenant's request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent dated September 28, 2011.

I find that the tenant did not violate the Act by failing to personally respond to the landlord when she attended the suite nor by denying the landlord entry to the unit on a verbal request. I find that section 29 of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; or (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Accordingly I find that the landlord is entitled to enter the rental unit with proper written notice 24 hours in advance and may inspect the premises on a monthly basis by giving notice in compliance with the Act.

### **Conclusion**

Given the above, **I hereby order that the Ten Day Notice to End Tenancy for Unpaid Rent dated September 28, 2011, 2011 is hereby cancelled of no force nor effect.**

**I hereby order that the parties comply with section 29 of the Act** with respect to permitting or requesting the landlord's access to the unit.

**I hereby order that it is a mutually agreed-upon term in the tenancy agreement that the tenant's payment of rent each month will require the tenant to make a deposit of the rental funds directly into the landlord's bank account, on or before the day it is due, and that the tenant will follow-up by giving a copy of the deposit slip to the rental manager within 7 days of the deposit.**

The remainder of the tenant's and the landlord's applications are dismissed without leave. Neither party is entitled to be reimbursed for the cost of their applications.

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: October 27, 2011.

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Residential Tenancy Branch