



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenants' application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice").

The hearing process was explained to the parties in attendance. Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and respond each to the other and make submissions to me.

I note that the landlord's agent continuously interrupted the hearing and presented himself to be argumentative.

### **Preliminary Issue:**

The landlord's agent, the current property manager, requested an adjournment of the hearing, stating that he received the tenants' application with the one page supporting documentary evidence two days prior to the hearing, due to the tenants delivering the hearing package and evidence to the landlord's office instead of to him in his home.

The tenants testified that the tenants delivered the application and hearing package to the landlord's office, on November 9, 2011. The landlord's agent did not dispute this, but said there were many people working in the office.

In assessing whether an adjournment request should be granted the following criteria can be considered pursuant to rule 6.4:

- whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1 [objective and purpose];
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;

- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
- the possible prejudice to each party.

I have denied the landlord's request for an adjournment of this hearing. I find that the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment.

I find the tenants served the landlord with the notice of hearing and their application in the time and manner required under section 89 of the Act and the landlord's failure to provide a credible reason for an adjournment are highly prejudicial to the tenants.

Therefore, I denied the landlord's request for an adjournment. I proceeded with this hearing solely on the testimony and evidence of the tenant and the testimony of the landlord's agents.

#### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent?

#### Background and Evidence

The tenants testified that this month to month tenancy started on July 22, 2010, monthly rent is \$825.00, which included utilities, and the tenants paid a security deposit of \$412.50 at the beginning of the tenancy. The landlord's agent submitted that monthly rent is \$830.00.

No evidence was presented by the landlord to support the monthly rental obligation of the tenants.

The parties agreed that there is no written tenancy agreement.

Although the Notice was not submitted into evidence by either party, the tenant testified that the landlord's agent served a 10 Day Notice to End Tenancy for Unpaid Rent upon them, listing an amount of \$1,277.04 as unpaid rent. The Notice was dated November 4, 2011, and listed an effective move out date of November 14, 2011.

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord's agent proceeded first in the hearing to explain why the Notice had been issued.

The landlord's agent submitted that the tenants failed to pay rent of \$305.00 for October, \$830.00 for November, and the utility costs of \$142.04, the amount listed on the Notice. The landlord's agent also verbally added \$25.00 late fee, although the landlord could produce no document which obligated the tenants to pay a late fee for late payments of rent.

Upon query the landlord's agent could not produce any evidence that the tenants were obligated to pay utilities as part of their tenancy agreement. Additionally, the landlord failed to produce documentation of what amount of rent was owed by the tenants, if any. For instance, the landlord's agent stated that the landlord did not want to honour the agreement, entered into evidence by the tenants, which indicated that the tenants were performing subcontract work for the landlord in exchange for rent.

The former property manager testified that he entered into the "work for rent" agreement with the tenants on behalf of the landlord as their agent, but that his services were terminated. The former property manager believed that the landlord now wanted to discontinue the tenants' services.

The tenants submitted that they are unaware what amount of rent is due, if any, and were not sure if they were to begin paying rent. The tenants also submitted that there have been five property managers since the beginning of the tenancy.

### Analysis

Based on the foregoing affirmed testimony and evidence, and on a balance of probabilities, I find as follows:

As the landlord was informed during the hearing it is the landlord's burden to provide sufficient information to prove the tenants owed unpaid rent at the time the Notice was issued. The landlord provided no evidence of rent payments or an accounting system which would indicate past payments by the tenants. Additionally the landlord included utilities in the amount claimed as unpaid rent, and there is no evidence before me that the tenants were obligated to pay utilities.

I find upon a balance of probabilities that the tenants were not obligated to pay utilities.

Due to the above, I find the landlord submitted insufficient evidence to show the tenants owed unpaid rent in any amount.

Conclusion

I therefore allow the tenants' Application for Dispute Resolution, and **I order that the Notice to End Tenancy, dated on or about November 4, 2011, is cancelled and is of no force or effect**, with the effect that this tenancy continues until it may legally end.

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: November 25, 2011.

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Residential Tenancy Branch