



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession due to unpaid rent, a monetary order for unpaid rent, authority to retain the security deposit, and to recover the filing fee.

The landlord testified that he served the tenant the Application for Dispute Resolution and Notice of Hearing by personal delivery on January 6, 2012; however the tenant did not appear at the hearing. The landlord, through his testimony and evidence of a witness statement, successfully demonstrated sufficient delivery of the documents under Section 89 of the Residential Tenancy Act (the "Act"). Thus the hearing proceeded in the tenant's absence.

The landlord appeared, gave affirmed testimony and was provided the opportunity to present his evidence orally and in documentary form prior to the hearing, and make submissions to me.

### Issue(s) to be Decided

Has the tenant breached the Residential Tenancy Act or tenancy agreement, entitling the landlord to an Order of Possession and monetary relief?

### Background and Evidence

There is no written tenancy agreement. The landlord testified that originally he and the tenant were roommates, beginning December 2008, and shared the landlord's home until April 2010, at which time the landlord moved.

The landlord stated that the tenant stayed, and continued to rent a room in the upper suite for \$475.00 per month. The tenant paid a security deposit of \$235.00.

The landlord testified that in August 2011, the tenant approached him and asked to rent an additional bedroom in the home for his son. The landlord testified that he agreed to

rent the additional room, beginning in December 2011, for a reduced rate of \$450.00 per month, and to reduce the rate for the tenant's room to \$450.00 per month, for a total rent of \$900.00 per month for two rooms.

The landlord submitted on his application that the rent for December was \$950.00 and that \$750.00 was paid in December. However, the landlord at the hearing testified that rent of \$700.00 for December was received in November, 2011 and that the amount of unpaid rent for December was \$200.00.

The landlord gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on January 3, 2012, by posting on the door. The Notice stated the amount of unpaid rent was \$950.00 as of December 1, 2011.

The landlord provided affirmed testimony that as opposed to the amount listed on the Notice as unpaid rent, \$950.00 as of December 2011, the amount should include the amount of unpaid rent through January, \$1,100.00.

The landlord stated that the tenant refused to sign a tenancy agreement which would include monthly rent of \$950.00 for two rooms, which I note contradicts the landlord's testimony that monthly rent was \$900.00, effective December 1, 2011. The landlord supplied a copy of the unsigned tenancy agreement, which listed the dispute address as above. I note that the landlord did not sign and date the tenancy agreement himself.

The landlord's relevant evidence included a copy of the Notice, a letter from the tenant to the landlord, an unsigned tenancy agreement, a handwritten Confirmation of Rent, which appears to be signed by the tenant, verify his renting status on the main floor at the rate of \$475.00, starting December 2008.

### Analysis

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

If rent is not paid when it is due, section 46(1) of the *Act* entitles landlords to end the tenancy within 10 days if appropriate notice is given to the tenant.

Dealing with the rent, the onus is on the landlord to prove the amount of rent payable and agreed upon at the commencement of the tenancy. On the subject of whether or not terms of a tenancy agreement can be enforced, Section 6(3)(c) of the *Act* states that

a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it.

In the case of verbal agreements, I find that when verbal terms are clear and when both the landlord and tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

In the circumstances before me, I find the landlord's evidence to be inconclusive and deficient and I therefore find the landlord failed to prove that the tenant owed the amount listed on the Notice as unpaid rent.

In reaching this conclusion, I find the landlord submitted insufficient proof that the parties had reached an agreement that the tenant would rent an additional room for a specific rent amount. The letter from the tenant submitted by the landlord demonstrates that the tenant acknowledged an additional room at some point, but not on a specific date. I was further also persuaded by the lack of a clear rental unit being listed on the unsigned tenancy agreement as well as the landlord's application, which shows an entire home being rented, not one room.

I was further persuaded by the landlord's contradiction between his testimony and his evidence, with the landlord consistently stating that the agreed upon rent for two rooms would be \$450.00 per month, and the landlord's evidence showing the rent to be \$475.00 per month.

Due to the handwritten letter signed by the tenant and submitted by the landlord and a balance of probabilities, I find that the tenant is renting one room for a monthly rent of \$475.00, due and payable on the first day of the month. I do not accept that the parties entered into an enforceable agreement that the tenant would rent an additional room, for a specific price on a specific date.

As the tenant made a payment of rent of \$700.00 in November for December, 2011, I find the amount of unpaid rent listed on the Notice to be invalid.

### Conclusion

Therefore, I find the 10 Day Notice to End Tenancy dated January 3, 2012, is invalid and of no force or effect and I hereby **dismiss** the landlord's application, with the effect that this tenancy continue until it otherwise ends under the Residential Tenancy Act.

As I have dismissed the landlord's application, I decline to award him an order of possession and recovery of the filing fee.

The landlord is at liberty to issue another 10 Day Notice to End Tenancy for Unpaid Rent consistent with the terms set out above.

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: January 24, 2012.

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Residential Tenancy Branch