



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities.

The landlord and the tenant both attended the conference call hearing, gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. The tenant also provided evidence in advance of the hearing to the Residential Tenancy Branch and to the landlord. All evidence and testimony provided have been reviewed and are considered in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for unpaid rent or utilities?

### Background and Evidence

The landlord testified that this fixed term tenancy began on October 31, 2010 and expired on October 31, 2011 and then reverted to a month-to-month tenancy. Rent in the amount of \$750.00 per month is payable on the 1<sup>st</sup> day of each month. On November 4, 2010 the landlord collected a security deposit from the tenant in the amount of \$375.00. A written tenancy agreement exists, but was not provided for this hearing.

The landlord further testified that the tenant did not pay rent when it was due for the month of October, 2011. The tenant paid the landlord \$375.00 for rent accompanied with a notation that the payment was for November, 2011, however, the landlord did not receive any other rent for November, 2011, and the tenant still owes \$750.00 for October and \$375.00 for November, 2011.

The landlord also testified that the tenant was hired by the landlord to perform services in the nature of property management. The landlord does not deduct income tax or

other deductions from employees' wages but requires employees to register their businesses, as was required by this tenant/employee. The agreement was for payment to the tenant at \$2,000.00 per month plus half of the rent. The tenant started work for the landlord on November 1, 2011 and was discharged by the landlord on November 2, 2011.

The landlord further testified that the tenant was served with 2 different notices to end tenancy on November 6, 2011, copies of which were provided by the tenant in advance of the hearing. The first is a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which is dated November 6, 2011 and contains an expected date of vacancy of November 30, 2011. The notice states that the tenant failed to pay rent in the amount of \$375.00 that was due on November 1, 2011. The other is also a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 6, 2011 and contains an expected date of vacancy of November 30, 2011. That notice states that the tenant failed to pay rent in the amount of \$750.00 that was due October 1, 2011.

The tenant testified that the tenant was hired by the landlord on October 7, 2011 and worked for 7 days. The tenant went to the landlord's house several times, was introduced to tradespersons by the landlord, who also gave the tenant a tour. The tenant was collecting cheques and doing walk-about for the landlord.

The tenant further testified that the landlord required the tenant to register the tenant's business name and the tenant did what was expected. The landlord had told the tenant that the landlord would give the tenant 6 post-dated cheques for wages, and the tenant was to pay half of the rent from the wages. The tenant denied being discharged as an employee by the landlord the day after being hired; the tenant stated that the tenant was fired on November 4, 2011.

The tenant further testified that the landlord served the tenant with both notices to end tenancy by posting them to the door of the rental unit, and that both pages of the notices were served.

### Analysis

The *Residential Tenancy Act* states that a landlord may serve a tenant on any day after the day rent is payable with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Once served, the tenant has 5 days to pay the rent or dispute the notice. If the tenant does neither, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice.

In this case, I find that the tenant was deemed to have been served with the notices on November 11, 2011. The tenant did not pay the outstanding rent, but applied for dispute resolution on November 9, 2011. The outstanding rents for October and November, 2011 have still not been collected by the landlord.

With respect to the tenant's claim that the landlord reduced the rent by one half for employment, I have no evidence to that effect. I find that the tenant has failed to establish that the landlord is not entitled to the unpaid rent. The tenant has not denied that the full month's rent for either of those months has not been paid, but the tenant paid for half of one of those months. Therefore, I cannot find that the notices to end the tenancy should be cancelled.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

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 29, 2011.

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Residential Tenancy Branch