



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt an application by the tenants to cancel a notice to end tenancy for unpaid rent. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

### Background and Evidence

This tenancy began November 15, 2012 with monthly rent of \$725.00, the tenants did not pay a security deposit.

On February 2, 2012 the landlord served the tenants with a 10 day notice to end tenancy for unpaid rent.

The tenants testified that they moved into the rental property on November 15, 2011 and made an agreement with the landlord to convert the basement into their rental accommodations. The tenants stated that the rent for November, December 2011 and January 2012 was paid directly to the landlord by the ministry. The tenants said that a security deposit had not been paid as when they took possession of the basement there was no liveable rental suite at that time.

The tenants stated that after the landlord evicted the upstairs the landlord advised the ministry that the downstairs tenants would also be vacating and the cheques from the ministry were put on hold. One of the tenants does have their share of the February and March rent however the other tenant's cheques are being held back.

The landlord testified that the original tenants sublet the basement suite without consent from the landlord to do so. The original tenants had also sublet a room in their living space to a third tenant but that tenant has since vacated.

The landlord stated that he had a tenancy agreement with the original tenants to rent the whole house for \$1300.00 per month. The landlord stated that on January 1, 2012 he gave the original tenants a 10 day notice to end tenancy for unpaid rent. The landlord stated that the original tenants have vacated the rental unit however the illegal sublet tenants remain in the basement suite.

The landlord has not made any efforts to rent the upstairs portion of the house and stated that as the utilities are shared it would be very difficult to do so and that was why he wanted the downstairs tenants to vacate.

The landlord maintained that he never agreed to enter into a tenancy agreement with the downstairs tenants and did not know if they had really completed the work in the basement. The tenants refuted this testimony as completely untrue and stated that the landlord sat at their kitchen table and discussed the work to be done in the basement and what the monthly rent would be. The tenants also stated that the landlord came by the basement suite a number of times to check the quality and progress of their work and had been very pleased with the results.

The tenants stated that they would mutually agree to end the tenancy March 31, 2012. The landlord understands that he will need to contact the ministry to have the tenants rent cheques re-issued and the March 2012 rent will not be considered late as this matter was taken out of the tenants hands by the landlord.

### Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the Notice to End Tenancy for Unpaid Rent.

The onus or burden of proof is on the party making the claim and in this case the landlord has claimed there is cause to end this tenancy and the tenant does not agree. The landlord must prove he has cause to end this tenancy and when one party provides testimony/evidence of the events in one way and the other party provides an equally probable but different testimony/evidence of the events, then the party making the claim has not met the burden on a balance of probabilities and the claim fails.

The landlord has taken rent from the tenants for 3 months and while there may not be a written tenancy agreement in place, the landlord has effectively created a tenancy. I also accept the tenant's testimony that the landlord was very much aware that they were converting the basement into a rental unit and that the landlord came by a number of times to check the on-going work.

Therefore I find that the landlord has failed in his burden of proving he has cause to end this tenancy.

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated February 2, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

Conclusion

The landlord's 10 Day Notice to End Tenancy for Unpaid rent dated February 2, 2012 is hereby set aside.

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: February 29, 2012

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Residential Tenancy Branch