



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel the 10 Day Notice to End tenancy for unpaid rent and to recover the filing fee from the landlords for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. Neither party provided documentary evidence to the Residential Tenancy Branch in advance of this hearing, however the landlord did provide evidence to the tenant in advance of the hearing and was were permitted to provide this evidence during the hearing by fax. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to have the Notice to End tenancy cancelled?

### Background and Evidence

Both parties agree that this month to month tenancy started on September 01, 2009. Rent for this unit was \$750.00 and this increased to \$780.00 on September 01, 2011. Rent is due on the first day of each month in advance.

The landlord testifies that the tenant failed to pay rent for June, August and September, 2011 and a 10 Day Notice to end Tenancy was served upon the tenant on January 27, 2012 by posting the Notice to the tenant's door. The landlord testifies that they omitted to include unpaid rent for January, 2012 on this Notice. The Notice states the tenant owes rent of \$2,310.00 which also includes late fees of \$15.00 per month. The Notice informs the tenant that he has five days to pay the outstanding rent or dispute the notice or the tenancy will end on February 06, 2012. The tenant did not pay the outstanding rent but did dispute the Notice on February 01, 2012. The landlord testifies that the tenant paid rent for February, 2012 and states he did not inform the tenant that this rent was accepted for use and occupancy only and did not reinstate the tenancy. The landlord has provided copies of his rent ledgers showing that no rent was paid for June, August or September, 2011.

The landlord requests an Order of Possession at the hearing.

The tenant disputes that he owes rent to the landlord for the three months in 2011. The tenant testifies these rent payments were made to the landlord by either cheque or money order. The tenant testifies that he has not been able to get evidence from his bank and no longer has the receipts for the money orders. The tenant testifies that he had a call from the landlord's accountant in June, 2011 saying rent was not paid. The tenant states he informed the landlord's accountant that he had paid the rent and the accountant should check the records. The tenant states he heard nothing back from the landlord or his accountant after that.

The tenant testifies that he had paid his rent for January, 2012 but as the landlord stated he had not received the cheque the tenant claims he left in the landlords lock box used by the tenants to deposit rent cheques; the tenant put a stop on that cheque on January 27, 2012. The tenant agrees he did not re-issue another cheque to the landlord for January, 2012.

The tenant seeks to have the 10 Day Notice to End Tenancy cancelled.

### Analysis

Having reviewed the evidence and the testimony of both parties, It is my decision that the tenant has not met the burden of proof showing he did pay rent for June, August and September, 2011 and the tenant agrees he failed to pay rent for January, 2012. Consequently I find the tenant does owe rent to the landlord to the sum of \$3,060.00 for June, August, and September, 2011 and January, 2012. The tenant was given the opportunity to provide evidence to the landlord that he had paid the rent for June, August and September but failed to do so and the landlord's records show these payments were not received by the landlord.

However, the landlord agrees that the tenant did pay rent for February, 2012. When a landlord has served a tenant with a 10 Day Notice to End Tenancy a landlord and tenant can agree to re-instate the tenancy if the tenant pays all or some of the rent after the five days period has passed but before the tenant is required to vacate. If the landlord does not want the tenancy to continue, the landlord must:

1. Clearly tell the tenant that the payment of rent outside the five days period, or payment of some of the rent within the five day period, does not cancel the Notice;
2. Specifically tell the tenant that the rental payment is being accepted for use and occupancy only and does not reinstate the tenancy; and
3. Tell the tenant of one of the following option:
  - The tenant must vacate in accordance with the Notice to End Tenancy, or
  - The tenant must move out of the rental unit at the end of the month.

Consequently, as the landlord did accept a rent payment from the tenant for February, 2012, and did not notify the tenant that this payment was accepted for use and occupancy only the landlord has in affect reinstated the tenancy. Therefore, the 10 Day Notice is cancelled and the tenancy may continue.

The landlord is at liberty to serve a new 10 Day Notice to the tenant if rent remains unpaid.

Conclusion

The tenant's application is allowed. The 10 Day Notice to End Tenancy for unpaid rent dated January 27, 2012 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from the next rent payment when it is due and payable to the landlord.

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 22, 2012.

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Residential Tenancy Branch