



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR MNDC FF

### Preliminary Issues

At the outset of the hearing a discussion took place whereby the parties clarified who the owner of the building was and who the property management company was. I confirmed with the parties that these were the names of the Landlord's and that the parties who attended the teleconference hearing on behalf of the Landlord were the Landlord's Agents.

Based on the aforementioned, I have amended the application to display the Landlords' names and not the name of the Agent; pursuant to section 64 (3)(c) of the Act which stipulates the director may amend an application for dispute resolution or permit an application for dispute resolution to be amended.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for unpaid rent and to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and to recover the cost of the filing fee from the Landlord for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Have the Landlords issued and served a valid 10 Day Notice to End Tenancy in accordance with section 47 of the *Residential Tenancy Act* (the Act)?
2. Has the Tenant met the burden of proof to establish the Landlord has breached the *Residential Tenancy Act*, regulation, or tenancy agreement?

3. If so, has the Tenant met the burden of proof to establish a momentary claim as a result of that breach, pursuant to section 67 of the Act?

### Background and Evidence

The parties agreed they have entered into the current tenancy agreement as of August 1, 2011, for a fixed term that switched to a month to month tenancy after February 28, 2012. Rent is payable on the first of each month in the amount of \$800.00 plus \$10.00 for parking and on or before August 1, 2011 the Tenant had paid an accumulated amount of \$400.00 as the security deposit for this new unit.

The parties further agreed that they had attended dispute resolution on January 17, 2012, to hear cross applications regarding \$870.00 of accumulated unpaid rent from as far back as August 2011. During this hearing the Landlord's application for unpaid rent and an Order of Possession was dismissed and the Tenant's application was upheld awarding the Tenant his \$50.00 filing fee.

The Tenant affirmed that the 10 Day Notice to End Tenancy he received February 2, 2012 was invalid because he paid his February 1, 2012 rent by depositing a cheque into the Landlord's office during the late evening of February 1, 2012 in the amount of \$760.00. He argued that this paid his rent in full plus his parking fee because he was instructed in the previous hearing to deduct the \$50.00 filing fee from his next rent payment.

The Tenant stated he is seeking \$4,000.00 in compensation which is comprised of four month's rent (\$3,200.00) \$400.00 for time lost at work, plus \$400.00 for gas and travel to have to file these applications and attend hearings. He confirmed he has occupied the rental unit for the past four months he is claiming and stated that he needs to be compensated for these costs for having to continually deal with the Landlords changing, for them not doing their business right and causing him this stress. He won the last arbitration so they should not have issued him this notice.

The Landlords confirmed they received the Tenants February cheque of \$760.00 on the morning of February 2, 2012 when they attended the office; however they did not cash the cheque until February 12, 2012. They acknowledged that the 10 Day Notice issued February 2, 2012 was for the \$870.00 brought forward from previous unpaid rent in August 2011. They stated that they were not aware that they could not collect on an old debt even though they had lost their arbitration. They were of the opinion that they could still collect that money and if it remained unpaid they could end the tenancy.

### Analysis

I have carefully considered the aforementioned and the documentary evidence which included, among other things, a copy of the January 17, 2012 dispute resolution decision, a copy of the 10 Day Notice to End Tenancy issued February 2, 2012, and copies of the tenant payment ledger.

The evidence supports the Notice was issued for monies owed from August 2011, and that this rent had been the subject of the January 17, 2012 dispute resolution whereby the Landlord's claim was dismissed. The dismissal of the Landlord's claim was a final judgment and therefore the Landlords cannot continue to attempt to collect this money from the Tenant and cannot end his tenancy for this alleged unpaid rent. Accordingly I find the 10 Day Notice to End Tenancy issued February 2, 2012 to be invalid, and is of no force or effect.

Upon the review of the Landlord's tenant ledger I find the Landlords not to be keeping accurate records of when payments are received. For example, the evidence supports the Tenant's February 2012 rent was placed inside the Landlord's office February 1, 2012 however it is entered on the tenant ledger as being paid on February 9, 2012. This ledger should reflect the date the payment was provided and not a date when the Landlord decided to post it or deposit it.

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*.

The *Residential Tenancy Policy Guideline # 16* provides that in addition to other damages a Dispute Resolution Officer may award aggravated damages. These damages are an award of compensatory damages for non-pecuniary losses such as for physical inconvenience and discomfort.

*Residential Tenancy Policy Guideline #16* also states that a Dispute Resolution Officer may award "nominal damages" which are a minimal award. These damages may be awarded where there has been insufficient evidence of a significant loss, but they are an affirmation that there has been an infraction of a legal right.

In this case, I find that the Landlords' act of issuing a 10 Day Notice for monies that had been claimed and dismissed in a dispute resolution hearing, to be an intentional act of trying to collect money that the Landlord was no longer entitled too. Therefore, I find the Tenant is entitled to nominal damages for having to arrange and attend this dispute

resolution proceeding and I award the Tenant **\$200.00**.

The Tenant has been successful with his application; therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

The 10 Day Notice to End Tenancy issued February 2, 2012 is HEREBY Cancelled and is of no force or effect.

The Tenant may deduct the one time award of **\$250.00** (\$200.00 + \$50.00) from his next rent payment.

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: March 01, 2012.

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Residential Tenancy Branch