



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNR, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenants. The application by the landlord is for an order of possession for unpaid rent, a monetary order for unpaid rent and recovery of the filing fee. The application by the tenants is to cancel the notice to end tenancy for unpaid rent. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

On March 3, 2012 the landlord gave the tenants a 10 Day Notice to End Tenancy for Unpaid Rent.

The landlord testified that in the spring of 2011 some trees fell on to the tenant's car during a wind storm and that the tenants used the \$800.00 rent to pay to have the trees removed. The landlord stated that they came to arbitration as the tenants had claimed the cost of tree removal to be the landlord's responsibility however the trees being blown over was ruled an act of God and the landlord not responsible for this expense.

The landlord stated that as the tenants did not have the \$800.00 cash to pay the landlord, he and the tenants discussed the landlord taking one of the tenant's vehicles instead. The landlord stated that the tenants then decided they did not want to give the landlord that particular vehicle and they did not have the vehicle title.

The landlord stated that throughout the past year he has repeatedly requested the \$800.00 from the tenants and he and the tenants have continued discussing the landlord taking a vehicle in place of the cash. The landlord stated that after serving the notice to end tenancy for unpaid rent which includes this \$800.00 amount, he again entered into a conversation with the tenants about taking a car but that he didn't know if he wanted to now.

The tenants stated that when they paid the \$760.00 of the \$800.00 March 2012 rent the landlord told them to not worry about the \$40.00. The tenants stated that the landlord typically only comes to the rental unit when rent is due at the start of the month and that they had the \$40.00 but the landlord never came by to pick it up. The landlord countered this testimony by saying that he was at the rental unit the day after he had been paid the \$760.00 and the tenants did not offer to pay the balance. The landlord also stated that he is always available by phone and they tenants are well aware of this as they have called him numerous times in the past.

### Analysis

Based on the documentary evidence and testimony of the parties I find that there is insufficient evidence to uphold the 10 Day 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. It is confusing at best to determine if the tenants believed the \$800.00 rent from 2011 to be due and payable or if the landlord was still willing to trade a vehicle in place of a cash payment. Discussions concerning this matter continued after service of the notice which may have led the tenants to believe that this amount was not really part of the rent owed. In this case it may benefit the landlord to determine if he wants cash or a vehicle and provide the tenants a document clearly outlining the landlord's expectations regarding the \$800.00.

There is also enough ambiguity regarding the balance of the March 2012 rent being available and whether or not the landlord was available to come pick up the rent as was the landlord's practice.

I therefore allow the tenant's application and set aside the landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated March 3, 2012 with the result that the tenancy continues uninterrupted.

As the landlord has not been successful in their application the landlord is not entitled to recovery of the \$50.00 filing fee.

As the tenants have been successful in their application the tenants are entitled to recovery of the \$50.00 filing fee.

### Conclusion

The landlord's 10 Day Notice to End Tenancy for Unpaid Rent dated March 3, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

The tenant may deduct \$50.00 from future rent owed to the landlord for recover of the filing fee paid to bring their application.

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 29, 2012

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Residential Tenancy Branch