



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNC

### Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy; to dispute an additional rent increase; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Should the notice to end tenancy be set aside, and should the tenancy continue?

Should the rent increase be allowed?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of a single detached manufactured home on acreage. Pursuant to a written agreement, the tenancy started on September 1, 2009. The rent was \$700.00 per month and subsequently reduced to \$500.00 as of July 2010. The tenant paid a security deposit of \$350.00.

The landlord served the tenant with a 1 Month Notice to End Tenancy dated March 10, 2012, which cites for reasons:

- The tenant is repeatedly late paying rent.
- The tenant put the landlord's property at significant risk.
- The tenant has caused extraordinary damage to the unit or property.

The landlord testified that the tenant was late paying rent in March and April 2011, and then in March 2012. She said that rent is due on the first of the month; concerning March 2012, she stated that rent was paid on the 22<sup>nd</sup>.

The tenant disagreed; she testified that she paid rent by depositing cheques in the landlord's bank account on the first of every month. She provided bank statements showing when the cheques are actually deposited by the landlord's bank. Concerning March and April 2011, the tenant stated that she had to call the landlord's bank to request a search for the cheques. She said that the bank found them and that they were subsequently cashed. Concerning March 2012, the tenant said that she sent the landlord 3 post dated cheques by regular mail as she was going to be away during that time frame due to deal with her ailing father. She said that the landlord advised her that she did not receive them; the tenant said that she put a stop payment and paid the landlord by cash.

The landlord stated that her property is at significant risk because it is agricultural land and the tenant has cars on jacks with motor oil, gas and other toxic substances dumped on the property; and that the cars are not on the rented portion of the property. The tenant argued that there are no spills whatsoever, and that one car is on jacks to avoid wheel rot.

Concerning extraordinary damage, the landlord stated that the tenant has cut down three trees, including a vintage tree. The landlord referred to an addendum to the tenancy agreement which the tenant signed, stating that the tenant is not to cut any of the trees without first calling the landlord. The tenant argued that she did not cut down the trees in question; she stated that one tree died and fell over due to maple bugs; she

said that she spoke to the landlord's brother who advised her to remove it, and that this is the only tree that was cut.

The landlord argued that there are many trees on the property and that although she had good intentions, the tenant cut down the trees without her consent. She referred to the tenant's letter dated July 11, 2011 wherein the tenant admits to cutting down the trees after signing an addendum specifying not to touch them. The landlord was asked to read the addendum, which clarified that the tenant was not directed not to touch the trees, but not to cut them. In reading the tenant's letter, I find that the tenant admits to pruning rather than cutting down trees.

Witness L.F testified that she did not notice any gas or oil spills; that she tenant did not cut down more than one tree; and that the tenant takes good care of the property. The landlord asked the witness if she knew all the trees that are on the property; L.F said that she did not. The landlord asked if the witness looked under the vehicles; L.F said that she did not.

Witness A.H testified that she did not notice any oil, gas, or toxic fluid spills by the vehicles. She said that the tenant did not cut down any of apple, plum, or nut tree, but did notice that the tree that fell over was cut down. The landlord asked the witness if she looked under the vehicles, and how she would know whether there were any spills; A.H replied that she would have noticed spills because her father is a farmer and a mechanic, and that she was raised in a related environment. The landlord asked if she could recognize an Italian plum tree; A.H said she could not. The landlord asked how she would know whether any other trees were cut; A.H said that whenever she was on the property she would go for walks during which the tenant would point out the various trees. The landlord asked the witness where the apple tree was; A.H replied that it was located over a hill at the bottom section of the yard. The landlord asked if she knew the difference between the trees; A.H said that she did not.

### Analysis

The parties were given an opportunity to settle this dispute; unfortunately there was a certain degree of animosity and an informal resolution could not be achieved. The landlord bears the burden to prove the grounds to end the tenancy. There was no documentary evidence before me from the landlord. Concerning the late rent; the tenant provided a reason why the cheques were late in March and April 2011; she stated that she deposited the cheques on time, and that the landlord's bank eventually traced and found the cheques. Based on the available evidence, I do not find that the tenant can be held responsible where the landlord's bank is late depositing rent cheques. Even if I accept that the March 2012 was late, I do not find that the landlord proved, on a balance of probabilities, that the tenant is repeatedly late paying the rent. I also take into consideration that the tenancy started in September 2009, that these are isolated incidents, and that the landlord declined to accept post dated cheques in order to resolve the problem.

The landlord's evidence was vague and non-specific; she provided no evidence concerning the alleged spills. Although she questioned the tenant's witnesses about looking under the vehicles, she did not testify whether she did herself, and if she did, when, how often, what she saw, and whether she gave the tenant an opportunity to correct the situation as required by the Act. She did not support her testimony with material evidence such as photographs. The same applies to the trees; she stated that the tenant cut down three trees; the tenant said she did not. The landlord did not substantiate her allegations. Rather, she stated that the tenant did so with the best of intentions. In this case there is no evidence that the tenant was neglectful or reckless, and I am not persuaded that the tenant breach a term of the tenancy agreement or the Act. In the absence of more substantive evidence, I find that the landlord did not have the grounds to issue a 1 Month Notice to End Tenancy. Rather, I find that the parties' relationship came to an end and that the landlord can no longer tolerate the tenant. The parties have completely opposite views on interpreting their agreement; however, the intolerance of one party does not necessarily constitute a breach of the Act by the other.

Notwithstanding, landlords and tenants under a tenancy agreement owe a statutory obligation towards one another. The landlord has a duty of care and a right to enforce a tenancy, and the tenant is entitled to certain rights pursuant to the Act. Repeated breaches by any party do not prevent the other from making future applications for dispute resolution and to present comprehensive, relevant and timely evidence which, at that time may generate a different outcome.

### Conclusion

The 1 Month Notice to End Tenancy is of no force or effect, and the tenancy will continue.

No evidence was presented concerning a rent increase and therefore I have not addressed it in my decision. This aspect of the tenant's application is dismissed with liberty to re-apply.

Since the tenant was successful, I authorize the tenant to recover the \$50.00 filing fee by a one-time deduction from the 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: April 11, 2012.

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Residential Tenancy Branch