



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

CNR, MNDC, FF

### **Introduction**

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an Order cancelling a 10 day Notice to End Tenancy for unpaid rent dated January 29, 2012, and for compensation of \$100 paid in excess for prior late fees paid, and to recover the filing fee for this Application.

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided evidence of a registered mail tracking results indicating that the subject registered mail was sent on February 09, 2012 and subsequently received and signed by a \_\_\_\_\_ on February 10, 2012, whom is purportedly the spouse of the landlord in this matter. The hearing proceeded and the tenant was given opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Should the 10 day Notice to End Tenancy be cancelled?  
Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

This tenancy began on December 1, 2010. The monthly rent payable is \$850 payable on the 1 st. of the month. The parties participated in a hearing on January 17, 2012 in which the landlord's two (2) Notices to End for unpaid rent were both found to be invalid and Ordered cancelled. The tenant again received a Notice to End (NTE) on January 29, 2012 for \$875.00 of unpaid rent stated as due on November 01, 2011. The tenant provided a copy of the January 17, 2012 Decision. The tenant testified that they have paid all rent payable to the landlord to date, and do not understand the NTE issued January 29, 2012 for the month of November 2011. The landlord did not previously issue receipts for rent; however, the tenant claims they have received receipts for the amount of the rent payable for January, February and March 2012.

The Decision of January 17, 2012 also states that the landlord was charging \$75 for late payment of rent, and that the \$75 charge was reflected in the 2 Notices to end given to the tenant and in dispute. The tenant testified that the excess sum charged and

subsequently paid by the tenant of \$100 (\$50 + \$50) has not been refunded by the landlord nor factored into any rental accounting. The tenant requests the return of the \$100 which they claim has been overpaid.

The Tenant testified that she had paid all the rent for November 2011 and that no rent is due. The tenant further testified that they have not received another NTE for Unpaid Rent since January 29, 2012.

### **Analysis**

On preponderance of the evidence and on the undisputed testimony of the tenant, and on a balance of probabilities, I find that the Decision of January 17, 2012 reflects that the onus was placed on the landlord to produce a more thorough and accurate and credible accounting of any shortfalls in rent in order for the landlord to advance a claim of unpaid rent. I have found the landlord was served with Notice of today's hearing and it was available to the landlord to attend and defend their onus that they issued the tenant a valid Notice to End Tenancy for Unpaid Rent dated January 29, 2012. I note that the landlord did not advance any document evidence in this matter or attended the hearing to defend their Notice to End. On balance of probabilities, I prefer the tenant's testimony and evidence and all the foregoing, standing alone and uncontested, as more credible to the landlord's Notice to End. As a result, I find the landlord's Notice to End dated January 29, 2012 **as invalid and of no effect, and effectively cancelled.**

On balance of probabilities, I find the tenant has submitted sufficient evidence to show that they overpaid 2 late rent fees by \$50.00 each, and **I grant** the tenant the resulting sum of **\$100.00** in compensation. As the tenant has been successful in their application, I Order that they may recover their filing fee for the application in the amount of \$50.00, for a total award of **\$150.00**.

### **Conclusion**

This Decision is final and binding on the parties. The landlord's Notice to End dated January 29, 2012 is **cancelled**. **I Order** that the tenant may deduct the amount of **\$150.00** from a future rent.

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 03, 2012

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Residential Tenancy Branch