



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

*CNR, FF*

### **Introduction**

This hearing dealt with an application by the tenant for an order to set aside a notice to end tenancy for nonpayment of rent. The tenant also applied for the recovery of the filing fee.

Both parties attended the hearing and had opportunity to be heard.

At the start of the hearing, the property manager explained why her evidence was late. However, the tenant had received the evidence and had the opportunity to read it. Accordingly, I accepted this evidence and it was used in the making of this decision.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy began on June 01, 2010. The monthly rent is \$730.00 due on the first of each month. On July 11, 2012, the landlord served the tenant with a notice to end tenancy for nonpayment of rent that was due in October 2011.

The tenant stated that since the start of tenancy he paid his rent in cash until December 2011, when he started paying rent by cheque. The prior practice was to put cash in an envelope and deposit the envelope, through the mail slot in the door to the manager's office.

The property manager stated that she informed tenants verbally to refrain from paying rent by this method and to ensure that they obtained a receipt if paying rent by cash. The resident manager added that envelopes that are put through the mail slot, land on the floor of his office and may not necessarily be safe. He confirmed that the slot is not attached to a secure locked mail box.

The resident manager stated that sometime in November 2011, he was informed by the accounting department that the tenant had not made payment for the month of October.

The manager stated that he spoke with the tenant and served him with a notice to end tenancy for nonpayment of rent. The tenant denied having had this conversation with the resident manager and also denied having received a notice to end tenancy, other than the one that he received on July 11, 2012, which is the subject of this dispute.

The tenant stated that the first time that he heard that rent for October 2011 was not paid, was when the manager informed him verbally, in late May 2012.

The manager argued that he did have this conversation with the tenant in November 2011 and as a result the tenant started paying rent by cheque from then on. The manager stated that he did not have a copy of the notice that he said he served the tenant in November 2011.

The tenant stated that since the start of tenancy in June 2010, he has always paid his rent but did not have receipts for all months, due to his method of paying rent in cash through the mail slot of the door to the manager's office. The landlord agreed that except for October 2011, the tenant was up to date on rent.

To further support his testimony of not owing any rent, the tenant narrated an incident that took place in February 2011, at which time this property management company took over management of this property. The tenant did not pay rent for that month as the then current manager had left and the tenant was unsure of whom to pay his rent to.

Sometime around the fifth of the month, an employee from this management company knocked on his door and requested that rent be paid. The tenant re confirmed that he had paid rent for all months since the start of his tenancy and stated that had he not paid rent for October 2011, he would have been notified in a similar manner which would have been much earlier than the verbal notification he received in late May 2012.

**Analysis:**

Based on the sworn testimony of the both parties, I must make a finding of whether rent for October 2011 was paid by the tenant or not.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case, the tenant stated that he paid rent by cash in an envelope that he put in the mail slot of the manager's office door. The manager states that rent was not paid as per the records of the management office and that the tenant does not have a receipt to prove that he paid rent.

Based on the testimony of both parties, I make the following findings:

1. The acceptable practice of paying rent in 2011 was to place cash in an envelope and put it in the mail slot of the manager's office door.
2. The mail slot does not lead to a secure locked box that is accessible by the landlord alone.
3. Until December 2011, the tenant paid rent by the accepted method of paying rent which was in cash deposited into the mail slot located on the manager's office door
4. The tenant had rent receipts for most months but did not have receipts for all months.
5. Both managers agreed that apart from October 2011, the tenant was up to date on rent payments
6. The resident manager did not have any documentation to support his testimony that the tenant was notified in November 2011, that he had not paid rent for October 2011.
7. The resident manager did not have a copy of the notice to end tenancy that he testified he had served on the tenant in November 2011.

Based on the above findings, I find that the items deposited into the mail slot of the manager's door, were not collected in a secure locked mail box. I further find that the landlord did not have sufficient documentary evidence to prove that the tenant was notified in November 2011 that he owed rent for October 2011. I also find that if as the landlord alleged, the tenant was served with a notice to end tenancy; the landlord did not file an application for dispute resolution to follow up on the notice.

Accordingly I find that on a balance of probabilities it is possible that the tenant paid rent in cash through the mail slot, as per the practice that was acceptable to the landlord at that time. Since this location is not secure and is accessible by persons other than the landlord, it is possible that the rent if paid by the tenant may not have reached the landlord.

Based on the sworn testimony of both parties, I find that the landlord has not proven that the tenant did not pay rent for October 2011 and therefore the notice to end tenancy is set aside and the tenancy will continue.

The tenant is entitled to the recovery of the filing fee and may make a onetime deduction of \$50.00 from a future rent.

**Conclusion**

The notice to end tenancy is set aside and the tenancy will continue. The tenant may make a onetime deduction of \$50.00 from the next 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: August 10, 2012.

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Residential Tenancy Branch