



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTRUIM DECISION**

Dispute Codes      OPE, MNR, LRE

### Introduction

This hearing was convened by way of conference call in repose to the tenant's application to cancel a Notice to End Tenancy, for a Monetary Order to recover the cost of emergency repairs, and for an Order to suspend or set conditions on the landlords' right to enter the rental unit. The tenant had applied inadvertently to cancel an Order of Possession because employment with the landlord had ended when the tenant states he did not receive that type of Notice but rather a 10 Day Notice to End Tenancy for unpaid rent the tenant seeks to amend this error on his application and now seeks to cancel the 10 Day Notice to End Tenancy for unpaid rent. As the landlords were aware which Notice they served the tenant I am prepared to amend the tenants application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

I advised the parties that there was an obvious error in the address of the rental unit. The parties did not raise any objections to the address of the rental unit being corrected from 'upstairs' to 'basement' and this has now been amended.

### Preliminary Issues

This hearing is an interim hearing to deal with the issues concerning the 10 Day Notice to End Tenancy and the tenants amended application to cancel that notice. The remainder of the tenants claim was not heard today due to time constraints and the complexity of the tenant's application and will be dealt with at the reconvened hearing.

### Issue(s) to be Decided

Is the tenant entitled to cancel a Notice to End Tenancy?

### Background and Evidence

The parties agree that this tenancy started on April 01, 2012. The tenant testifies that his monthly rent was \$300.00 per month and testifies that the landlord has altered the tenancy agreement from \$300.00 to \$400.00. This alteration has not been agreed or initialled by the tenant to show the tenants agreement. The landlord testifies that rent for this unit is \$400.00 and the landlord AR testifies that she has initialled this alteration.

The parties do agree that rent is due on the first day of each month. The tenant testifies that this is a month to month tenancy. The landlords testify that this is a fixed term tenancy for three months and after that time the tenant must vacate the rental unit as indicated on the tenancy agreement. The landlords have initialled under the section that states at the end of the fixed term the tenancy ends and the tenant must vacate the rental unit. The landlords have provided an unsigned tenancy agreement with no last page. This agreement does not have the tenants name on it and the second box for the above section has not been initialled by the tenant.

The landlords testify that their son was coming to live in the rental unit on July 01, 2012. As the tenant refused to vacate the unit their son had to move into the unit with the tenant as their son's roommate. The landlords testify that the tenant failed to pay rent for July and August, 2012 and the tenant has only been paying 300.00 per month for the duration of the

tenancy and not the \$400.00 stated on the tenancy agreement. The landlord ER testifies the tenant was served with a 10 Day Notice to End Tenancy. The landlord AR testifies that she does not recall the date the tenant was served with this 10 Day Notice but states the tenant told them he would be moving out so asked the landlords to change the effective date of the Notice to August 08, 2012. The landlords' testify that the tenant was served with a complete 10 Day Notice by hand and they have provided a copy of this two page Notice in evidence. The Notice states the tenant owes \$400.00 in unpaid rent.

The tenant disputes the landlords claim and the validity of both the tenancy agreement and the 10 Day Notice. The tenant testifies that the landlords have altered the tenancy agreement and have not included the tenant's name. The tenant testifies the landlords served him with the first 10 Day Notice on July 20, 2012 but took that notice back to amend the dates on the notice as the dates were incorrect. The landlords then served the tenant with the correct 10 Day Notice on July 21, 2012 but failed to serve the tenant with the second page of that Notice. The tenant testifies that he did notice that this was a two page document but the second side was blank.

The landlord ER testifies that the tenant does not owe rent. The landlord ER then testifies that the tenant does owe rent because he only paid \$300.00 for each of the months instead of \$400.00 so owes 4100.00 for each month. The landlord ER also testifies that the tenant failed to pay rent for July and August, 2012.

The tenant disputes the landlords claim and reiterates that the rent was only \$300.00. The tenant testifies that he had an agreement with the landlord ER to do some work on the landlords' property in lieu of rent for July and August. The tenant testifies that he repaired the landlords' driveway, cleaned out two sheds and did some garden work while the landlord ER was having surgery for a pacemaker. The tenant testifies that he charged the landlord the total sum of \$625.00 for this work as agreed by the landlord. The tenant has provided a receipt showing July, 2012 rent was paid of \$300.00 signed by the landlord ER. The tenant testifies that this left \$350.00 for August rent which covered that with a credit to the tenant of \$25.00. The tenant testifies that he gave the landlord his invoices for the work in July 2012. Copies of the tenant's invoices for this work have been provided in evidence.

The landlord ER disputes the tenants claim. The landlord ER testifies that he did agree that the tenant could do the driveway and the sheds but would not have agreed that the tenant could do the garden if the landlord had known how much the tenant was going to charge to cut the grass. The landlord testifies that as he did not agree the tenant could do the garden at this amount the tenant now owes \$100.00 in unpaid rent for August.

The landlords call their witness JR who is the landlords' son. The landlord asks the witness if the tenant knew the witness would be moving into the rental unit on July 01, 2012. The witness replies that his father (the landlord) had told him this and told the witness that there was a written tenancy agreement which stated there would be a new tenant starting July 01, 2012. The landlord asks if the tenant lock the witness out of the unit in the middle of July. The witness replies that he was told he would not be welcome in the unit from the middle of July. The witness states he has not been downstairs in the unit and has had to live upstairs. The landlord asks the witness if he believed he was going to share this unit. The witness replies that no, he thought the unit would be unoccupied by July 01, 2012.

The witness was questioned by the Dispute Resolution Officer and asked if the witness ever moved into the basement unit. The witness replies that he did move into one of the rooms and had some of his belongings in other areas of the unit. The witness was asked if he was to share this unit with the tenant. The witness replies that this was his understanding.

The tenant cross examines this witness and asks the witness if he knew the tenant was living in the unit. The witness replies that he did not find out until June 29 or June 30. The tenant asks the witness if the witness had trespassed into the unit. The witness replies that no, he did not. The tenant asks the witness if the witnesses name is on the tenancy agreement. The witness replies that he has not seen the agreement.

The tenant testifies that his understanding of the tenancy was that after the three months fixed term the tenancy would revert to a month to month tenancy. The tenant testifies that the landlord simply moved their son into the rental unit without the tenant's permission.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witness. I find there are discrepancies and contradictions in the testimony of both parties. However I am only dealing with the tenant's application at this time to cancel the Notice to End Tenancy. In light of this I have reviewed the documentary evidence and testimony concerning the service of the 10 Day Notice. The tenant argues that the Notice is invalid as the tenant only received the first page of that Notice. The landlords argue that they served the tenants with both pages and have provided two pages in evidence. Consequently I am satisfied with the documentary evidence before me that the tenant was served both pages of this 10 Day Notice.

The tenant argues that the landlords have altered the terms of the tenancy agreement by changing the amount of rent from \$300.00 to \$400.00 without the tenant's agreement. In this matter the landlord has the burden of proof to show how much rent was agreed upon at the start of the tenancy to determine if any rent is outstanding now. If a landlord alters any terms of a tenancy agreement a landlord and tenant must both initial the alteration to show that both parties agree to the alteration. As the tenancy agreement provided only has the landlords initials on the alteration changing the amount of rent I am not satisfied that the tenant agreed to this and therefore I find the rent for this unit remains at \$300.00.

With regard to the landlords' claim that the tenant was only given permission to do work on the driveway and sheds, I find the landlord ER has contradicted himself in his testimony and stated that he would not have given the tenant permission to do gardening if he had known how much the tenant was going to charge. The landlord ER then testifies that he did not give the tenant permission. The tenant argues the landlord did give permission for the tenant to cut the grass as the landlord was having surgery and could not take care of the garden himself. The tenant has also provided invoices for the work which he gave to the landlord.

If a landlord allows a tenant to carry out work for the landlord in lieu of rent, the landlord should determine the exact hourly rate for the work or obtain a quote for the job. To come

back after the work has been done and state that it was too much money would not release a landlord from their obligation to pay the tenant or take the money owed from the tenants rent.

I find there are further discrepancies in the landlords ER testimony when the landlord at first stated the tenant did not owe rent, then the tenant did owe \$400.00, then the tenant owed rent for July and August. Due to these discrepancies when a testimony is given under oath I find I can put very little weight on the landlords testimony particularly since the tenant has provided a rent receipt signed by the landlord ER which shows rent was paid for July, 2012 and due to the landlords acknowledgement that he had agreed to the tenant doing some work for the landlord.

Consequently as the landlords have failed to meet the burden of proof that rent is outstanding I must cancel the 10 Day Notice to End Tenancy.

I am prepared to address the issue of the tenancy agreement at this hearing. I have reviewed the tenancy agreement provided by the landlords in evidence. This agreement does not have the tenants name on it and I have no last page of the agreement to determine if the agreement was signed by the parties. This agreement does however state that this is a three month fixed term tenancy. If the landlords required the tenant to vacate the rental unit at the end of the three month term the landlords should have ensured the tenant initialed the box to the right of the section that details that the tenancy will end at that time. As only the landlord has initialed that box I find the tenancy reverted to a month to month tenancy after the fixed term ended.

Therefore with regard to the landlords' son moving into the rental unit; It is my decision that the landlords are not entitled to move anyone else into the rental unit without the permission of the tenant as the tenant has sole occupancy of the rental unit at this time. Regardless of whether or not the tenants name is on the tenancy agreement an agreement has been entered into because the landlords have accepted rent from the tenant.

Conclusion

The tenant's application for this interim decision is allowed. The 10 Day Notice to End Tenancy for Cause dated August 23, 2012 is cancelled and the tenancy will continue.

The remainder of the tenants claim will be determined at the reconvened hearing on September 26, 2012 at 09.00 a.m.

I have included Notices of Adjourned Hearing for each party with their decision.

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 23, 2012.

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Residential Tenancy Branch