



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by an agent for the tenant and an agent for the landlord.

While the Application named two tenants as the applicants, the tenant's agent clarified at the outset of the hearing that he is the tenant's community support worker and is representing for the purposes of this hearing but that he is not a tenant in the rental unit. As such, I have amended the tenant's Application to remove the tenant's agent's name as an applicant.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Notice to End Tenancy for Unpaid Rent or Utilities, pursuant to Section 46 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on April 27, 2008 for a month to month tenancy beginning on May 1, 2008 for a monthly rent of \$600.00 due on the 1<sup>st</sup> day of each month with a security deposit of \$300.00 paid.

The tenancy agreement includes notations in relation to the "suite number" of "126 – 208G – 121S". In addition there is a notation beside the rent amount of \$600.00 that states "May 1, 2012 \$660.00." Neither of these notations are signed or initialed by anyone.

The tenant submitted a 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on August 22, 2012 with an effective vacancy date of September 4, 2012 due to \$720.00 in unpaid rent.

The parties agree there was a flood in rental unit 126 where the tenant was living in December 2011; that the tenant was moved to unit 208; that in May 2012 the tenant was moved into unit 121.

The landlord submits that when the tenant was put into the 1 bedroom unit 208 that rent on that unit was \$190.00 more than the rent on the tenant's original unit and that when they all agreed to have the tenant move to 121 the rent there was \$60.00 more. The landlord testified the tenant owes 3 months at \$190.00 (\$570.00) and 5 months at \$60.00 (\$300.00) for the additional rent over and above the amount of his original rent from unit 126 of \$600.00 per month.

The landlord submits that the tenant had been offered in January 2012 to move back to his original rental unit as repairs had been completed but that the tenant stated he did not want to move back to his original unit.

The landlord also submits that the tenant and his agent were aware of the increased rent back in February 2012 when the agent provided the landlord with an additional \$190.00, but that once the agent had paid this additional money she did not discuss the situation again until May 2012 when they agreed to move the tenant to 121.

The tenant's agent submits that the tenant was never informed that his original rental unit was available for him to return to; that he was not aware that he would be charged any additional rent for either unit 208 or 121; that no new tenancy agreement was entered into; and that the landlord had not provided any form of written notice of any rent increases.

The tenant's agent submits that he paid the landlord \$190.00 on the tenant's behalf in February 2012 because he and the tenant were of the belief the landlord would evict the tenant if they did not pay this amount, not because they had agreed to any additional rent amounts.

### Analysis

Section 46 of the *Act* allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving the tenant notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

In order for the landlord to issue such a notice they must establish that any amount of rent was unpaid on the date the notice was issued and it was past the day that the rent was due.

Based on the tenancy agreement submitted by the landlord, I find the tenancy agreement stipulates the rent is \$600.00 per month, despite the additional notations, I see no acknowledgement from either the landlord or the tenant on the tenancy agreement that these changes were made.

Further the landlord has provided no new tenancy agreements; notices of rent increases; or written agreements with the tenant about any different amounts of rent that the tenant would be responsible for in the units the landlord had moved the tenant to.

As the tenant's agent submits that the tenant was never informed that his original unit was repair and suitable for his return and the landlord has not provided any corroborating evidence to establish that the tenant was informed, I find the landlord has failed to establish the tenant was so informed.

For these reasons, I find that the landlord has failed to establish that the rent agreed to by the two parties in the tenancy agreement signed by them on April 27, 2008 has changed from \$600.00 per month or that the tenant had agreed to any different amounts of rent while staying in the rental unit provided by the landlord to the tenant after the flood; or the unit that the tenant moved to after his original unit was no longer available.

As such, as the landlord claims the amount of rent unpaid is strictly the amounts relating to these increase rent amounts, I find the landlord has failed to establish that there was any rent outstanding on the date the 10 Day Notice to End Tenancy for Unpaid Rent was issued (August 22, 2012).

### Conclusion

As per above, I grant the tenant's Application and cancel the 10 Day Notice to End Tenancy issued by the landlord on August 22, 2012 and find the tenancy remains in full force and effect.

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: September 28, 2012.

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Residential Tenancy Branch