



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNR, CNL

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Ten-Day Notice to End Tenancy for Unpaid Rent dated August 2, 2012 with effective of August 12, 2012. The application indicated that the hearing was also to seek an order to cancel a Two Month Notice to End Tenancy for Landlord's Use.

Both parties appeared and gave testimony during the conference call.

At the outset of the hearing it was established that the landlord had never issued a Two Month Notice to End Tenancy for Landlord's Use in writing on the proper form.

Therefore, the issue of a Two Month Notice to End Tenancy for Landlord's Use was not included as part of the hearing.

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

The remaining issue to be determined based on the testimony and the evidence is whether the landlord's Ten-Day Notice to End Tenancy for Unpaid Rent should be cancelled.

The burden of proof is on the landlord/respondent to justify the reason for the Ten-Day Notice.

### **Background and Evidence**

Submitted into evidence was, a copy of the Ten-Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 2, 2012 indicating that rental arrears of \$650.00 was due on August 1, 2012 but had not been paid. The landlord testified that the Notice was served on August 2, 2012 and the tenant testified that it was served on August 10, 2012.

The landlord testified that after the tenant had not paid rent owed for August, a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that at no time did the tenant offer payment for the rent that was owed. The landlord testified that

the tenant also failed to pay rent for September 2012. The landlord is seeking an order of possession and a monetary order for \$1,300.00 rent owed.

The tenant testified that she had received a verbal notification from the landlord that the landlord was ending the tenancy so that a relative could move into the suite. However, the landlord did not issue this in writing. The tenant testified that she advised the landlord to issue a proper Two Month Notice to End Tenancy for Landlord's Use which the tenant believed would entitle her to receive the equivalent of one month compensation. The tenant testified that the landlord later stated that they decided not to end the tenancy for landlord use. According to the tenant, when the tenant attempted to pay her rent for August in cash, the landlord declined to issue a receipt for the payment, so the tenant felt she could not pay the rent in cash. The tenant stated that she did not feel it was appropriate to pay the rent unless she received a receipt. The tenant testified that the landlord then evidently contacted social services and advised the department that the tenant had failed to pay the rent. As a result, according to the tenant, her income was affected by this action and this also impacted her ability to pay rent for September. The tenant testified that she finally got the matter sorted out and was able to obtain a money order for all of the rent owed for August and September, but this occurred after the five-day deadline to cancel the Notice and the landlord has refused this payment as well. A copy of the money order for \$1,300.00 made out to the landlord was in evidence.

The tenant is therefore asking that the Ten Day Notice to End Tenancy for Unpaid Rent be cancelled and that the landlord accept the money order in payment for rental arrears owed.

The landlord acknowledged that they did contact social services, but disputed the remainder of the tenant's version of events.

### **Analysis**

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the Regulation or the tenancy agreement.

Through testimony from both parties it has been established that the tenant did not pay the rent for August when it was due. When a tenant fails to comply with section 26, section 46 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

I find that, although the Ten Day Notice to End Tenancy for Unpaid Rent is dated August 2, 2012, the parties are at odds as to when it was served on the tenant.

Section 46 of the Act provides that, within 5 days after receiving a notice under this section, a tenant may dispute the notice by making an application for dispute resolution. In this instance, I accept that the tenant received the Notice on August 10, 2012, and I find that the tenant did make an application to dispute the Notice within the five-day period.

In addition, the Act also provides that within 5 days after receiving a notice under this section, the tenant may pay the overdue rent, which would automatically cancel the Notice. I find that this tenant had until August 15, 2012 to pay the rental arrears stated on the Notice to cancel the Notice.

I find that the tenant has stated that she tried to pay the rent within the 5-day period but was not able to do so because the landlord apparently refused to issue a receipt and the landlord disputes that this ever occurred.

I find that both versions of what transpired were only supported by verbal testimony from each of the participants. That being said, the parties are not on equal ground. because the landlord carries the added burden of proof as it is it is the landlord who seeks to terminate this tenancy.

For this reason, I find that I must cancel this Ten Day Notice to End Tenancy for Unpaid Rent . This decision is premised on the expectation that the tenant will give the landlord the money order for \$1,300.00 forthwith and will pay the rent in accordance with the Act henceforth.

Should the tenant default on the rent in future, the landlord is at liberty to issue another Ten Day Notice to End Tenancy for Unpaid Rent.

### **Conclusion**

Given the above, I find that the Ten Day Notice to End Tenancy for Unpaid Rent dated August 2, 2012 must be cancelled and I order that it is of no force nor 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 17, 2012.

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Residential Tenancy Branch