



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenants – CNC, CNR, FF

For the landlord – OPR, OPB, ET

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenants have applied to cancel a Notice to End Tenancy for unpaid rent; to cancel a Notice to End Tenancy for cause and to recover the filing fee from the landlord for the cost of this application. The landlord has applied for an Order of Possession for unpaid rent and utilities; for an Order of Possession because the tenants have breached an agreement with the landlord. The landlord's lawyer withdrew the landlord's application for an Early End to the tenancy.

Two of the tenants and a lawyer for the landlord attended the conference call hearing, the tenants gave sworn testimony and the parties were given the opportunity to cross examine each other 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.

### Issue(s) to be Decided

- Are the tenants entitled to cancel a notice to end tenancy for cause?
- Are the tenants entitled to cancel a notice to end tenancy for unpaid rent?
- Is the landlord entitled to an order of possession for unpaid rent or utilities?

- Is the landlord entitled to an order of possession because the tenants have breached an agreement with the landlord?

### Background and Evidence

The parties agree that this tenancy started on November 01, 2011. This is a month-to-month tenancy. The tenants pay a monthly rent of 1,500.00 per month and rent is due on the first day of each month in advance.

The landlord's lawyer states that the tenants were served with a 10 day notice to end tenancy in person by a process server on August 24, 2012. This notice informs the tenants that they owe rent of \$375.00 that was due on August 01, 2012 and unpaid utilities of \$148.00.

The tenant's dispute that they owed any rent to the landlord for August and have provided two receipts which the tenants testify were written by the landlord or the landlords wife as it is the same handwriting that appears on the tenancy agreements. The tenants testify that they paid \$1,075.00 on August 01, 2012 and \$425.00 on August 16, 2012. These amounts were paid before the landlord issued a 10 day notice.

The tenant testifies that he did withhold an amount of \$425.00 for September's rent and states this was withheld in compensation for the landlord's invasion of the tenants' privacy. The tenant testifies that this amount will be paid today. The tenants also dispute that they owe the sum of \$148.00 for utilities. The tenant testifies that the gas and electricity are in their name and all the utility bills are paid. The tenant testifies that in accordance with the tenancy agreement the water and garbage utilities are in the landlords name and are to be paid by the landlord. The tenant testifies that the landlord did approach the tenant to have the water put into their name but as the tenants have not agreed to this the landlord is not entitled to alter the terms of the tenancy agreement.

The landlord's lawyer states that the tenants have breached an agreement with the landlord concerning keeping pets at the property the landlord's lawyer refers to the tenancy agreement provided by the landlord in evidence. The landlord's lawyer points out that the landlords copy of the tenancy agreement is an original copy and clearly shows that no pets are allowed.

The tenant disputes the landlords claim that they have breached an agreement concerning pets. The tenants have provided a copy of the tenancy agreement they have with the landlord. Under section 4 on the tenants copy of the tenancy agreement there is no mention of pets there is simply a line through that section and under section 13 of the tenants copy there is some wording that has been crossed out and on the landlords copy this wording states no pets. The tenant testifies that under section 13 the landlord wrote 'Les excepts pet damages' (wording as written on agreement) and this has been initialled. The tenant testifies that one of the tenants LF had an agreement with the landlord to accept full responsibility for any pets and the landlord was in full agreement with the tenants keeping a pet up until August 22, 2012. The tenant testifies that they have not altered their copy of the tenancy agreement and it is a true copy that was given to them by the landlord at the start of the tenancy.

The tenant testifies that they seek to cancel the 10-day notice as there is no outstanding rent for August. The tenants also seek to cancel the one month notice to end tenancy for cause the tenant testifies that this notice was served to them in person on August 24, 2012. The tenant testifies that the landlord's reasons on this one month notice are false. The tenant testifies that he believes this notice was given to them in retaliation after the police arrested the landlord two days prior to the notice being served. The tenant testifies that the landlord broke the lock on the storm door and entered one of the tenants room. The tenant asked the landlord to leave and had to call 911. The tenant testifies that the police told him to get the landlords to leave until they got there. The tenant did so but the landlord broke another lock and entered the unit and assaulted the tenant. The police came and arrested the landlord and the tenant has provided a police file number.

The tenant testifies that the landlord would continually invade their privacy by entering the house without notice.

The landlord's lawyer states that there has been no arrest or charges from this incident and this all occurred because the landlord had issues with the tenants not paying the rent is.

### Analysis

A landlord is entitled to issue tenants with a 10 day notice on the day after the date that rent is due. In the matter of this 10 day notice that was served to the tenants on August 24, 2012 I find the tenants have provided sufficient evidence to show that there was no rent outstanding on the day the notice was served. The landlord has also indicated on this notice that there is a sum of \$148.00 outstanding in utilities for August. However, the utility bills are in the tenants name and paid for by the tenants as indicated on the tenancy agreement and the landlord is responsible for the water and garbage. A landlord may not alter the terms of a tenancy agreement without the written permission of the tenants. Consequently, the landlord has provided no evidence to show that there are outstanding utilities and I find their handwriting on receipts provided by the tenant for August rent appears to be the same handwriting as on the tenancy agreement. Therefore I find there is no outstanding rent for August and the 10-day notice to end tenancy is invalid and is hereby cancelled.

With regards to the landlords application an order of possession because the tenants have breached an agreement with the landlord; I have reviewed both the landlords and the tenants' tenancy agreements as provided in their evidence packages. I am of the opinion that the landlord's tenancy agreement has been altered under section 4 of that agreement that states no pets as this has not been recorded as such on the tenants' copy of the agreement. Under section 13 of the tenancy agreement the landlords copy again specifies no pets but also has the notation under that section that indicates that

the landlord did allow one of the tenants to keep a pet as long as the tenant accepted responsibility for any damages that this pet caused. Consequently, I find the landlord has no valid reason to end the tenancy for a breach of the terms of a tenancy agreement and this section of the landlord's application is dismissed without leave to reapply.

With regard to the tenants application to cancel the one month notice to end tenancy for cause; the landlord has provided no evidence to support any of the reasons given on that notice and the tenant has disputed all of the reasons given on the notice. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and the landlord has not filed an application for an order of possession for cause. As a result, the Notice is cancelled and the tenancy will continue.

As the tenants have been successful in cancelling both notices it is my decision that the tenants are entitled to recover their \$50 filing fee paid to this application.

### Conclusion

The tenants' application is allowed. The one month notice to end tenancy for cause dated August 23, 2012, is cancelled and the 10 day notice to end tenancy for unpaid rent and utilities dated August 23, 2012 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notices, they are entitled to recover their \$50.00 filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: October 01, 2012.

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Residential Tenancy Branch