



# 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 an Application for Dispute Resolution by the Tenants to cancel two 10 Day Notices to end tenancy for unpaid rent

The parties appeared at the teleconference hearing, acknowledged receipt of hearing documents submitted by the Tenants and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Should the 10 Day Notices issued September 4, 2012 and September 17, 2012 be cancelled?

### Background and Evidence

The parties agreed they entered into a verbal tenancy agreement that began in June 2012. Rent is payable on the first of each month in the amount of \$900.00 and in June 2012 the Tenants paid \$450.00 as the security deposit.

The Landlord submitted that he personally served the Tenants with the first 10 Day Notice on September 4, 2012 and after receiving a payment of \$750.00 they served a second 10 Day Notice on September 17, 2012.

The Tenant argued that he is on disability and that his rent was previously provided to him from Income Assistance and then he would pay the Landlord. He advised that when

his mother passed away he had to go out of Province for her funeral which caused him to fall behind on his rent and utility payments. He stated that after he received the 10 Day Notice on September 4, 2012 he entered into an agreement with the Landlord, M.G. that the Tenant would arrange for Income Assistance to pay the Landlord \$750.00 towards the arrears and have Income Assistance start paying the rent directly to the Landlord. The Tenant stated that two days after the \$750.00 was paid to the Landlord he reneged on their arrangement and served the second 10 Day Notice.

The Landlord, C.W., confirmed that he had knowledge of the repayment agreement and that after the Landlord M.G. attended the rental unit and saw someone he did not approve of at the Tenant's unit he decided to withdraw his agreement and move forward with the eviction. C.W. confirmed that the Landlord has received full payment of October and November 2012 rent directly from Income Assistance and that no receipts have been issued to the Tenants for these payments.

In closing, the Tenant advised that he wished to work out a payment plan to pay up the arrears but he was concerned because the Landlord M.G. will no longer talk with him.

C.W. confirmed that he acts as Agent for M.G. and that he was not provided the authority to negotiate a repayment plan during the hearing. He stated he was instructed to request an Order of Possession.

### Analysis

A Notice to End Tenancy can be waived and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when a landlord has accepted payment for rent from a tenant after the Notice to End Tenancy has been served.

In the circumstances relating to the 10 Day Notice issued September 4, 2012, I find that the parties agreed to withdraw the Notice and reinstate the tenancy based on their verbal agreement which required the Tenants: (a) to pay the Landlord \$750.00, (b) arrange to have their rent paid directly to the Landlord from Income Assistance, and (c) agreed to work out a repayment plan for the balance due.

The evidence supports the Tenants upheld their requirements of the agreement; however, the Landlord M.G. unilaterally decided not to uphold his end of the agreement and subsequently issued a second 10 Day Notice on September 17, 2012.

The Landlords have since accepted payments for rent for October and November 2012 rent, a period after the effective date of the September 17, 2012 Notice. Accordingly I find the Landlords have waived the September 17, 2012 Notice and reinstated the tenancy.

Based on the foregoing, I find that both 10 Day Notices were waived. Accordingly I uphold the Tenants' application to cancel the two 10 Day Notices.

### Conclusion

The 10 Day Notice issued September 4, 2012, is HEREBY CANCELLED and is of no force or effect.

The 10 Day Notice issued September 17, 2012, is HEREBY CANCELLED and is of no force or effect.

This tenancy is in full force and effect and continues until such time it is ended in accordance with the *Residential Tenancy Act*.

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 26, 2012.

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Residential Tenancy Branch