



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

*OPR, MNR, CNR, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant. The landlord applied for an order of possession pursuant to Section 55 of the Act based on a Ten Day Notice to End Tenancy for Unpaid Rent dated February 18, 2014 or based on a One-Month Notice to End Tenancy for Cause dated October 31, 2013. The tenant applied for an order to cancel the notice to end tenancy for rent, pursuant to Section 46 of the Act.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issues to be Decided**

- Is the landlord entitled to a monetary order for unpaid rent?
- Is the landlord entitled an order of possession based on either the Ten Day Notice to End Tenancy for Unpaid Rent or the One-Month Notice to End Tenancy for Cause?
- Has the tenant proven that the Notice to End Tenancy for Unpaid Rent should be cancelled?

### **Background and Evidence**

Based on the testimony of both parties, I find that the tenancy started in September 2013 and a security deposit of \$250.00 was paid. There is no written tenancy agreement. The tenant paid rent of \$500.00 each month for the months of September 2013, October 2013, November 2013, December 2013 and January 2013.

The landlord testified that the rental rate was supposed to be \$500.00 per person and therefore the two tenants had been underpaying the rent and were in arrears. A Ten Day Notice to End Tenancy for Unpaid Rent was issued on February 18, 2014 and served on the tenant terminating the tenancy effective February 28, 2014. The landlord had submitted a copy of the Notice into evidence. The arrears that the landlord had shown on the Notice were stated as follows: "\$500.00/PERSON".

The landlord testified that the tenant did not pay the arrears within 5 days and the landlord seeks an Order of Possession and a monetary order of \$400.00.

The tenant testified that they never agreed to pay rent of \$500.00 per person, but did agree to rent of \$500.00 per month for the rental unit. The tenant pointed out that for the months of September, October, November and December 2013 and January 2014, the tenant paid and the landlord accepted the monthly rent of \$500.00. The tenant pointed out that the landlord had accepted a security deposit of 50% of the rent in the amount of \$250.00, which confirms that the agreed-upon rent was \$500.00 from the outset.

With respect to the Ten Day Notice to End Tenancy for Unpaid Rent, the tenant testified that they tried to pay the rent, but the landlord refused to accept it. The tenant testified that the landlord refused to accept payments of \$500.00 each month since that time.

The landlord confirmed that the landlord chose to refuse the "partial" rental payments of \$500.00. The landlord's position is that the correct rent to be paid is \$1,000.00 per month for the two occupants. The landlord pointed out that he is seeking to end the tenancy in any case for cause.

A copy of a One-Month Notice to End Tenancy for Cause dated October 31, 2013 was in evidence and the landlord stated that they also seek to obtain an Order of Possession based on that Notice.

The tenant argued that the tenancy has been reinstated since that Notice was issued in October 2013 and rent has been paid consistently and accepted by the landlord for the months of November 2013, December 2013 and January 2014 following the Notice.

## **Analysis**

### **One-Month Notice to End Tenancy for Cause**

Based on the testimony and evidence of both parties, I find that the landlord reinstated the tenancy since the issuing of the One-Month Notice to End Tenancy for Cause dated October 31, 2013. For this reason, I find that the Notice is no longer effective and the landlord is not entitled to an Order of Possession based on the 1-Month Notice.

### Ten Day Notice to End Tenancy for Unpaid Rent

In regard to the rent being claimed by the landlord, I find that 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 this Act, the regulations or the tenancy agreement. (My emphasis).

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. This section of the Act also provides that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 13 of the Act provides that:

*“A landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004.”* (My emphasis)

Section 13(2)(f)(iv) of the Act states that the tenancy agreement must set out:

“the amount of rent payable for a specific period, and , if the rent varies with the number of occupants, the amount by which it varies.”

I find it likely that the tenant genuinely believed that the rent was \$500.00 when the tenancy began and the landlord apparently confirmed this by virtue of the fact that the landlord accepted payments of \$500.00 each month for several months without serving a 10-Day Notice to End Tenancy for Unpaid Rent.

I further find that the Ten Day Notice to End Tenancy for Unpaid Rent issued on February 18, 2014 makes no mention of any rent shortfall for the months preceding the Notice.

In the alternative, I find it possible that, when the (verbal) contract was initially formed in September 2013, the parties never did have a genuine meeting of the minds with respect to the specific amount of rent being charged nor that it may vary with the number of occupants permitted.

Given the above, I find, on a balance of probabilities, the rental rate for the unit is \$500.00 per month.

In addition, with regard to the validity of the Ten Day Notice to End Tenancy for Unpaid Rent, I find that the landlord did not properly identify the total amount of arrears allegedly owed. I find that in the space for the amount due the landlord only stated, "\$500.00/PERSON".

Given the above, I find that the Ten Day Notice to End Tenancy for Unpaid Rent dated February 18, 2014 is cancelled and order that it is of no force nor effect.

I accept that the tenant did not pay the \$500.00 rent owed for February 2014, March 2014 and April 2014. That being said, I also accept the testimony of both the landlord and the tenant, that the landlord refused payment of the over-due rent.

As the Ten Day Notice to End Tenancy for Unpaid Rent has been found to be of no force nor effect, I find that the tenant must now pay rent owed in the amount of \$500.00 for each month due including February 2014, March 2014 and April 2014, and for each month thereafter. I order that the landlord accept this rent as required under the Act.

I hereby dismiss the landlord's application in its entirety without leave.

I order that the tenant is entitled to be reimbursed the \$50.00 cost of this application and I order that the tenant deduct this amount from the next rental payment owed to the landlord.

### **Conclusion**

The tenant is successful in the application and the request to cancel the Ten Day Notice to End Tenancy for Unpaid Rent is granted. The landlord is not successful in their cross application which is dismissed without leave.

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: April 15, 2014

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Residential Tenancy Branch

