



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

The landlord applies for an order of possession pursuant to a ten day Notice to End Tenancy dated August 20, 2014. The landlord also seeks a monetary award for unpaid rent.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord is entitled to any of the relief requested?

### Background and Evidence

The rental unit is a three bedroom upper suite in a house. The lower portion of the home is apparently rented out to others. The tenancy started on August 4<sup>th</sup> or 5<sup>th</sup>, 2014. The monthly rent is \$1600.00, due on the first of each month, though the August rent was adjusted downward to account for the first few days in August.

It is not clear whether there is a written tenancy agreement. The landlord's claim indicates the tenant declined to sign one because the landlord demanded more identification than she was prepared to reveal. The tenant testified that she signed and sent a tenancy agreement to the landlord after she moved in, but did not retain a copy.

It is not disputed that at move in the tenant paid the landlord \$1396.00 for the adjusted rent and \$800.00 for a security deposit. Those amounts were paid by a cheque each from the tenant's sister's bank account. The tenant's sister cancelled the cheques the following day. It appears the landlord attempted to deposit them but the cheques were dishonoured.

The tenant says her sister cancelled the cheques because there was no written tenancy agreement or perhaps over the identification dispute. She says she informed the landlord and that she tried to replace the cheques but the landlord refused to come and get them at the rental unit. There is a text dated August 8<sup>th</sup> from the tenant to the landlord indicating that she hoped to receive personal cheques on Monday (August 11). It appears the landlord may also have refused the August 11<sup>th</sup> couriered envelope containing the cheques.

As of August 20<sup>th</sup> funds had not changed hands. After receiving the ten day Notice on August 23<sup>rd</sup> demanding payment of \$1600.00, the tenant arranged to place two "bank drafts" in the amounts of \$1100.00 and \$200.00 for a total of \$1300.00, in the rental unit mailbox and texted the landlord that it was there. From the text messages presented at hearing it appears the landlord intended to come and retrieve the money but never did.

On September 3, the landlord's representative "M" texted the tenant saying that "her parents" will only take cash.

The tenant called as a witness a courier/delivery driver Mr. G. who testified that on October 10<sup>th</sup> and again October 19<sup>th</sup> he delivered envelopes (containing tenant's evidence, not rent) from the tenant to the landlord. He did not indicate he had any difficulty doing so.

No money has changed hands at anytime in this tenancy.

By an application made October 17, 2014 (RTB file 827897) the tenant has applied to cancel the ten day Notice to End Tenancy and for monetary relief for alleged deficiencies in the rental unit. That matter is scheduled to be heard on November 28, 2014.

### Analysis

The essential aspects of this dispute are governed by s. 46 of the *Residential Tenancy Act* (the "Act"). The relevant portions of that section provide:

#### **Landlord's notice: non-payment of rent**

- 46 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

\* \* \*

(2) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.

\* \* \*

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
- (b) must vacate the rental unit to which the notice relates by that date.

The Notice demanded \$1600.00 in overdue rent. Whether or not the tenant tried to tender rent money to the landlord, she did not tender the \$1600.00 demanded in the Notice. Indeed, she did not tender the \$1396.00 she originally paid for August rent with her sister's, later cancelled, cheque.

It is incumbent on a tenant who disagrees with a ten day Notice to dispute it by making and application for dispute resolution. Subsection (5) above is strict: a tenant who fails to pay the overdue rent stated in the Notice or to dispute the Notice is "conclusively deemed" to have accepted the end of the tenancy. That phrase leaves an adjudicator absolutely no room to consider any mitigating factors or any reasonable excuses. It is meant to be final and to end the tenancy.

The tenant has now applied to dispute the Notice. However, that application is much past the five day period allowed in the Notice. An arbitrator has the power to extend the time for a person to make an application for dispute resolution but s. 66 (3) of the *Act* specifically prohibits an adjudicator from extending time to apply beyond the effective date of a Notice to End Tenancy. In this case the effective date of the Notice was September 2, 2014. The tenant's application was not made until October 17<sup>th</sup> and so that portion of the application seeking to cancel this Notice is bound to fail.

In regard to rent, I find that August rent was \$1396.00 and, whether or not the tenant has been trying to pay it and the landlord is trying to avoid receiving it, it is owed.

I grant the landlord a monetary award for that \$1396.00, plus \$1600.00 rent that came due September 1<sup>st</sup>, 2014, plus \$1600.00 for loss of October rental income, plus recovery of the \$50.00 filing fee.

Conclusion

As a result of the Notice to End Tenancy dated August 20, 2014, this tenancy ended on September 2, 2014 and the landlord is entitled to an order of possession.

The landlord will have a monetary order against the tenant in the amount of \$4646.00.

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 21, 2014

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Residential Tenancy Branch

