



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNR, FF

For the landlord: OPR, MNR, MNDC, MNSD, FF

### **Introduction**

This hearing was convened as the result of the cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenant applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and for recovery of the filing fee paid for this application.

The landlord applied for an order of possession for the rental unit due to unpaid rent, a monetary order for money owed or compensation for damage or loss and unpaid rent, for authority to keep all or part of the tenant’s security deposit, and for recovery of the filing fee.

The tenant and landlord attended the hearing. At the beginning of the hearing, neither party raised any issue regarding the service of the other’s evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, respond to the other’s evidence, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

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

Is the tenant entitled to an order cancelling the Notice and to recovery of the filing fee paid for this application?

Is the landlord entitled to an order of possession for the rental unit due to unpaid rent, monetary compensation, and to recover the filing fee?

### Background and Evidence

The landlord submitted a copy of a written tenancy agreement, dated November 15, 2005, listing this landlord and another person as the tenant. The tenant/applicant here was listed as an occupant. The tenancy started on November 15, 2005, for a monthly rent of \$850.00, and a payment of \$425.00 for the security deposit.

The landlord submitted, without dispute from the tenant, that the current monthly rent is now \$990.00. The landlord submitted that he had increased the rent over the course of the tenancy, but did not submit into evidence the notices of a rent increase.

As to the originally listed tenant, the tenant/applicant here stated that she was his common-law wife, and that she moved out 7 years ago, while he stayed in the rental unit with their children residing there at various times.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

### Landlord's application-

The landlord stated that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on March 6, 2015, by handing it to the tenant, listing unpaid rent of \$990.00 as of March 1, 2015. The effective move-out date listed was March 16, 2015.

The Notice informed the tenant that he had 5 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice or to pay the rent in full; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice.

The landlord asserted that for the last 2 years, he has had a working relationship with the tenant, and allowed the tenant to work for him and to make up the balance of the monthly rent owed, or \$990.00 presently, with work at a set hourly rate. The landlord confirmed that he never questioned the number of hours presented by the tenant to offset monthly rent, as he worked with the tenant. The work included floor repairs, repair to stairs, cleaning, yard work and general repairs.

The landlord's monetary claim listed in his application was \$990.00 for March 2015.

### *Tenant's response-*

The tenant submitted that he is a "drywaller" by trade and that he has helped the landlord with several major renovations around their city. The tenant submitted further that when he performs drywall work, he charged the landlord \$18.00 per hour for that expertise in the trade.

The tenant submitted further that when the Notice was issued, he did not owe rent as they had not settled what amount of rent would be owed by the end of the month, when the monthly calculations were made and any rent owed would be paid.

The tenant submitted further that the landlord was upset with him as he had informed the landlord that he was leaving for a better job with higher wages, resulting in the landlord issuing the Notice.

### Analysis

In the case before me, I accept that the original tenancy ended and a new tenancy was formed between this landlord and this tenant when the original tenant vacated, leaving this tenant residing in the rental unit. I therefore find that the written tenancy agreement entered into evidence by the landlord was no longer valid or enforceable as there was a new tenancy formed approximately 7 years ago. I also accept that the tenant owed monthly rent to the landlord and there was no disagreement between the landlord and tenant that the monthly rent contribution of the tenant was \$990.00.

Section 1 of the Act defines rent as *“money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit”*.

Additionally, both parties agreed that for at least the last 2 years, the tenant performed handyman/general contractor services for the landlord on this rental unit and other properties owned by the landlord, at the rate of initially \$11.00 per hour, but currently at the rate of \$12.00 per hour.

The undisputed evidence also was that at the end of the month, the tenant submitted to the landlord his monthly hours worked, multiplied those hours by the hourly rate, and paid the landlord any balance remaining between the value of the tenant's labour and the monthly rent of \$990.00.

### *Landlord's Application-*

Under section 46 of the Act, a landlord may seek to end a tenancy if rent is unpaid on any day after the day it is due, by serving the tenant a notice to end the tenancy.

In this case, I find there is no clear date when rent is due, as the parties have commingled their employer/employee working relationship with their landlord/tenant relationship, offsetting the wages owed to the tenant against the rent owed to the landlord at the end of each month.

As the undisputed evidence shows that the parties did not calculate the amount of monthly rent that would be owed by the tenant until the end of each month, I find that when the landlord issued the Notice on March 6, 2015, the tenant would not have owed the amount of \$990.00 for March 1, 2015, as listed on the Notice. I was further

influenced in making this finding as I accept the tenant's evidence that he had worked for the landlord during the month of March.

I therefore find that the landlord submitted insufficient evidence to support his Notice that on March 6, 2015, when the Notice was issued, the tenant owed unpaid rent of \$990.00, due to the party's confirmation that the rent deficiency was dealt with at the end of each month. The Notice was therefore premature when served.

As a result, I find the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated and issued by the landlord on March 6, 2015, listing an effective end of tenancy of March 16, 2015, is not valid and not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

As I have cancelled the Notice as I find the Notice was issued prematurely before the end of the month when calculations are made, I decline to grant the landlord a monetary award for unpaid rent for March based upon that Notice.

As I have cancelled the landlord's Notice, I also decline to award the landlord recovery of the filing fee.

#### *Tenant's application-*

As I have cancelled the landlord's Notice, I grant the tenant's application seeking cancellation of that Notice.

As I have granted the tenant's application, I grant the tenant's request to recover the filing fee. I allow the tenant to deduct \$50.00 from his next or a future month's rent payment in satisfaction of his monetary award, alerting the landlord as to when he is making this deduction.

I note that I found I could not make any orders to the parties at this time, under section 62 of the *Act*, in order to clarify each other's rights and obligations under the *Act* going forward, as the parties themselves commingled their employer/employee and landlord/tenant status by unwritten agreement. The parties are encouraged to put any future changes in writing for enforcement purposes.

#### Conclusion

The landlord's application is dismissed, without leave to reapply.

The tenant's application seeking cancellation of the Notice is granted and he is authorized to deduct \$50.00 from his next or a future month's payment of rent for recovery of the filing fee.

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 21, 2015

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Residential Tenancy Branch

