



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes

cnr, mndc

### Introduction

The tenant applies for an order cancelling a 10 day Notice to End Tenancy (for unpaid rent or utilities), and for a monetary order as against the landlord.

### Issues to Be Decided

- Should the 10 day Notice to End Tenancy be cancelled?
- Is the tenant entitled to compensation from the landlord?

### Background and Evidence

This tenancy began November 1, 2011. Monthly rent is \$648.83 due on the 1<sup>st</sup> day of each month.

The landlord's representative testified that the tenant failed to pay all rent for July. Initially there was a shortfall of \$269.83, which resulted in the issuing of a 10 Day Notice to End Tenancy. About a week later, the tenant paid a further \$134.32 towards July's rent. August rent was paid on time, in full, and was accepted unconditionally by the landlord. September's rent was also paid and accepted unconditionally by the landlord.

The tenant submitted that his fridge stopped working sometime on Thursday, June 25. On Friday morning he discovered that his ice had all melted, and the temperature in the fridge was very warm. He immediately called the landlord's manager. The manager did not answer, but another person did, and a message was left about the fridge. No representative from the landlord attended to his suite as a result of the call. The tenant was able to save some meat from his fridge, when a neighbor agreed to keep it for him in their fridge. The following day (Saturday) the tenant again called the manager's number, and again spoke to someone other than the manager. A maintenance man then came to the unit, whose response was to kick the fridge. The tenant went 4 days without a working fridge and the rest of his food spoiled. A replacement fridge was then provided, which the tenant believes was in the building the entire time that the tenant's fridge had not been working. The replacement fridge was not new, and although it working, it is noisier than the prior fridge. The landlord's manager advised the tenant to turn in an estimate of his losses.

The tenant spent about \$30.00 per day for 4 days eating at fast food restaurants, and estimated the value of the loss of food to be \$150.00. He provided this estimate to the landlord on July 2,

and deducted the sum of \$270.00 from his rent for July, paying only \$378.83. After receiving the 10 day Notice, he felt intimidated and guilty about not paying all his rent, and although he had no further money, a week later he pawned some items and paid the landlord a further \$134.32.

The tenant paid his full rent for August and September, and received receipts for same from the landlord. The receipts do not indicate the rent was accepted only on a use and occupation basis.

### Analysis

I first address the issue of the effect of the 10 Day Notice to End Tenancy. Section 26(1) of the Residential Tenancy Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Residential Tenancy Act or the tenancy agreement. I note that the tenant was never provided any authorization or permission from the landlord to withhold rent due to the broken fridge, or to pay a reduced rent to account for his expenses and loss of food. The tenant was therefore required by virtue of section 26(1) to pay the full rent for July, regardless of whether the landlord repaired or replaced the fridge in a timely way, and regardless of having expended money on food and having lost food. It was not a legal option for the tenant simply to withhold a portion of the rent. The landlord was therefore entitled to serve the 10 Day Notice ending this tenancy. Upon receipt of that notice, the tenant should have paid the full rental arrears within the required 5 day period, in order to have the tenancy continue. The tenant failed to do so. The notice in such circumstances was effective to end this tenancy, and in most cases the tenant's claim to have the notice cancelled would have been dismissed.

In the present case, however, the tenant tendered rent for August and for September, and this rent was accepted by the landlord. Given that this extended the tenancy beyond the effective date of the tenancy, and given that the rent was accepted unconditionally, and not merely for use and occupation, I find that the landlord has effectively reinstated the tenancy. Accordingly, the Notice is rendered void, and the tenancy continues.

I turn to the tenant's claim for compensation. While the landlord clearly had no control as to when the fridge would cease to function, the landlord was properly and immediately put on notice by the tenant that it was not working, yet it took four days before the landlord provided the tenant with another fridge. The landlord does not deny that the replacement fridge was on hand in the building, and offers no reason why the fridge was not replaced sooner. I accept therefore that the landlord must bear responsibility for the tenant's losses arising from the landlord's failure to replace or repair the fridge in a timely way. I further accept as reasonable the estimates of the tenant that he lost \$150 worth of food, and spent a further \$120.00 for restaurant food over the course of the four days. Accordingly, I order that the landlord must pay or credit the tenant with the sum of \$270.00.

To effect such payment there are two alternatives. As one option, the landlord can pay the sum of \$270.00 to the tenant prior to the end of September, 2015. If such payment is received by the

tenant, then the tenant will still owe the shortfall of July's rent of \$135.68 to the landlord (\$270.00 less the subsequent \$134.32 payment). The tenant would also pay full rent for October.

Alternatively, if the tenant has not received a \$270.00 payment from the landlord by September 30, a portion of the \$270.00 (the sum of \$135.68) will be deemed to be offset as against the shortfall of July's rent that remains owing. The tenant will then deduct the remaining balance of \$134.32 owed by the landlord to the tenant, from the rent owed for October. In other words, the tenant would simply pay the sum of \$514.51 for October rent. Following such payment, all rent for July and October will have been fully paid by the tenant, and the landlord's \$270.00 obligation to the tenant would also be satisfied.

#### Conclusion

The Notice to End Tenancy is void, and the tenancy continues. The tenant is awarded \$270.00, payable by 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: September 09, 2015

---

Residential Tenancy Branch

