



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOODRICH REALTY INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a 10 Day Notice to End Tenancy for unpaid rent.

The tenant and landlord's agent (the landlord) attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide a copy of the 10 Day Notice during the hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?

### Background and Evidence

The parties agreed that this month to month tenancy started in February, 2008. Rent for this unit is currently \$670.00 per month due on the 1<sup>st</sup> of each month.

The landlord testified that the tenant paid \$620.05 for her rent for February, 2016. The tenant withheld \$49.95. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on February 02, 2016. This was sent by registered mail to the tenant on that date and has an effective date of February 10, 2016. The landlord provided a Canada Post tracking number for service of this document which shows the tenant received the 10 Day Notice on February 05, 2016. The landlord testified that the tenant had provided postdated cheques for subsequent months' rent payments and the rent for March was paid in full; however, the landlord agreed that it was an oversight that she did not inform the tenant that the rent paid for March was accepted for use and occupancy only and did not reinstate the tenancy.

The landlord requested that the 10 Day Notice is upheld and asked for an Order of Possession effective at the end of April, 2016.

The tenant testified that at a previous hearing held on November 02, 2015 the tenant was awarded the sum of \$300.00 and in that decision it said the tenant could deduct that amount from her rent. The tenant testified that she called the landlord and asked them not to present her postdated rent cheque for December, 2015 for \$670.00 and she would issue a new rent cheque for \$370.00. The tenant testified that the landlord did present the cheque for \$670.00 and the tenant had to put a stop on the cheque provided to the landlord for \$370.00.

The tenant testified that in January, 2016 the tenant sent the landlord a new cheque for \$370.00 which covered her rent for January less the \$300.00 the tenant was allowed to deduct from her rent. The tenant testified that as she incurred costs for registered mail and a bank charge to put a stop on the cheque the tenant withheld \$49.95 from her rent for February, 2016.

The landlord agreed that the tenant did get an Order for \$300.00 in November, 2015; however, the landlord did not get this until the end of November, 2015. As they held a

postdated rent cheque for December and had not received another cheque from the tenant for \$370.00 the landlord went ahead and cashed the cheque for \$670.00. In January, 2016 the tenant had not provided any further cheques and a 10 Day Notice for unpaid rent was served upon the tenant on January 11, 2016. The tenant then paid \$370.00 on January 15, 2016.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I accept that the tenant has withheld the amount of \$49.95 from her rent for February, 2016 and that this amount was not paid within the five allowable days permitted under the *Act*. However, I refer the parties to Residential Tenancy Policy Guidelines #11 Re; Amendment and Withdrawal of Notices which explains the applicable law.

This guideline explains that a Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by express or implied consent of both parties.

This guideline also explains that the question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End Tenancy has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End Tenancy, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- whether the receipt shows the money was received for use and occupation only.
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and

- the conduct of the parties.

In this case the landlord accepted a payment of rent for March, 2016 for \$670.00.

The landlord agreed that nothing was given to the tenant that stated that the rent payment for March was being accepted for use and occupancy only and that the acceptance of this rent did not reinstate the tenancy. I find that by accepting the rent for March in this manner the landlord reinstated the tenancy. Accordingly, I find the landlord has reinstated the tenancy.

I strongly advise the tenant to ensure all rent is paid to the landlord. If the tenant withholds rent for any purpose other than by an Order from the Director or as allowed under the Act then the tenant may jeopardize her tenancy.

### Conclusion

As the landlord has reinstated this tenancy I find the 10 Day Notice to End Tenancy is cancelled and the tenancy will continue

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 04, 2016

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Residential Tenancy Branch