



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AMEX SUNRICH REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPB, FF (Landlord's Application)  
                                 CNR, FF (Tenant's Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenant on March 9, 2016 and by the Landlord on March 1, 2016. The Landlord applied for an Order of Possession on the basis that the Tenant has breached a fixed term tenancy agreement with the Landlord and to recover the filing fee. The Tenant applied to cancel a notice to end tenancy for unpaid rent and to recover the filing fee.

An agent for the Landlord (the "current agent") and the Tenant appeared for the hearing and provided affirmed testimony. The parties confirmed receipt of each other's Application and their respective documentary evidence served prior to the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to cancel the notice to end tenancy?

### Background and Evidence

The Tenant testified that this tenancy started on March 1, 2015. The Tenant signed a written tenancy agreement with the previous agent of the Landlord for a fixed term of one year which was due to end on February 28, 2016. The tenancy agreement stated that the tenancy was due to end on this date and the Tenant was required to vacate the rental unit. Rent for the rental unit is set at \$5,000.00 payable on the first day of each month.

The Tenant testified that on September 2, 2015 she had a meeting with the previous agent of the Landlord. In this meeting they both agreed that as the Landlord had failed to provide proper use of the balcony for the rental unit, the tenancy agreement would be changed to allow the tenancy to continue on a month to month basis after the fixed term had ended, so that the Tenant could enjoy the balcony for the summer period of 2016.

The Tenant testified that the previous agent of the Landlord amended the agreement to continue the tenancy on a month to month basis after the fixed term ended. The Landlord initialed and dated page 2 of the tenancy agreement. The Tenant provided a copy of this into evidence. The Tenant also referred me to an email conversation between her and the previous agent of the Landlord that took place on the same date in which the Tenant requested confirmation of the agreement. The previous agent of the Landlord replied to the Tenant's email on the same date confirming that he was in agreement that the tenancy would continue on a month to month lease after the end date of February 2016.

The current agent testified that he took over the tenancy in December 2015 and as far as he was concerned the only copy he had was the original tenancy agreement which required the Tenant to vacate at the end of February 2016. When the current agent was asked whether he had spoken to the previous agent of the Landlord about the change in the tenancy agreement evidenced by the Tenant, the current agent testified that he had no knowledge of this agreement and that he had not made efforts to contact the previous agent to confirm this. The Tenant stated that she had contacted the previous agent of the Landlord who informed her that he had parted company with the current agent on bad terms.

The current agent argued that at no time did he authorize the tenancy to continue on a month to month basis after February 2016 and that he had a number of email conversations with the Tenant cautioning her that the tenancy was to end on February 2016. The Tenant rebutted this by referring to the email evidence the current agent was referring to where the current agent had offered the tenancy to continue on a month to month basis. The Tenant pointed to her reply informing the current agent that she already had an agreement with the previous agent for this arrangement.

The Tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "Notice") on March 8, 2016 by registered mail. The Notice was provided into evidence and is dated March 2, 2015 due to \$5,000.00 due on March 1, 2016. The Landlord confirmed that he had served this to the Tenant by registered mail on March 2, 2016.

The Tenant testified that she applied to dispute the Notice on March 9, 2016. However, before this she had applied to recover the cost of emergency repairs through dispute resolution. As a result of that application, a hearing was held to hear the Tenant's application for the costs of emergency repairs, by a different Arbitrator on April 14, 2016 (the file number for which appears on the front page of this decision).

The Tenant allowed me to examine the decision that had been made for the previous hearing. In that decision, that Arbitrator had determined that the Tenant had endured costs for emergency repairs. However, the Arbitrator determined that the Tenant was not going to be provided relief for this as the Tenant had already deducted the cost of the repairs from March 2015 rent.

The current agent confirmed that the Tenant was allowed to deduct the cost of emergency repairs from her rent and that the outstanding balance of March 2015 rent had been received by the Landlord on March 11, 2016. The current agent confirmed that there were no rental arrears in this tenancy and the Notice was of no effect. The Landlord also confirmed that the Tenant had paid full rent for April 2016 and had not been issued with any documents or instructions that rent for April 2016 was being accepted for use and occupancy only.

### Analysis

Based on the parties' evidence in relation to the Notice, I make the following findings. Section 90(a) of the *Residential Tenancy Act* (the "Act") provides that a document served by mail is deemed to have been received five days later. Therefore, I accept that the Landlord served the Notice to the Tenant on March 2, 2015 by registered mail. As a result, the Tenant would have been deemed to have received the Notice on March 7, 2016 and would have had until March 12, 2015 to dispute the Notice or pay the rent owing pursuant to Section 46(4) of the Act.

Based on the foregoing, I find that the Tenant disputed the Notice within the time limits set by the Act. The previous Arbitrator made findings that the Tenant had endured emergency repairs during this tenancy. Therefore, I find the Tenant had authority under Section 33(7) of the Act to withhold a portion of the rent for March 2015. In addition, the current agent agreed to the deduction and confirmed that there were no rental arrears. Furthermore, I find that when the Landlord accepted rent from the Tenant for April 2015, this is further evidence that the tenancy was re-instated. As the Landlord agreed that the Notice was of no effect, the Tenant agreed to withdraw her Application to recover the filing fee.

In respect to the Landlord's Application, I find the Tenant's evidence that the previous agent of the Landlord amended the original tenancy agreement to allow the fixed term tenancy to continue on a month to month basis after the end of February 2016, to be credible and convincing. This is because the Tenant requested from the previous agent of the Landlord confirmation of this by email which satisfies me of the change.

The current agent was unable to provide a preponderance of evidence that would suggest that the tenancy was not allowed to continue on a month to month basis. I find the current agent's oral evidence that this agreement did not exist or was not authorised by him is not sufficient to change the legal contract that was agreed to and amended by the parties on September 2, 2016.

Based on the foregoing, I deny the Landlord's Application for an Order of Possession and recovery of the filing fee. The tenancy will continue on a month to month basis until it is ended pursuant to the Act.

During the hearing, the parties requested information on monetary awards determined in previous hearings. I informed the parties that they were at liberty to contact an Information Officer on the Residential Tenancy Branch Information Line but cautioned both parties regarding Section 72(2) (a) which allows a tenant to make deductions from rent on which an Arbitrator has awarded a landlord to pay.

### Conclusion

The Notice dated March 2, 2016 is cancelled. The Tenant withdrew her Application to recover the filing fee. The Landlord's Application is dismissed without leave to re-apply.

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 20, 2016

---

Residential Tenancy Branch