



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, FF

### Introduction

This was a hearing with respect to the tenant's application to cancel a 10 day Notice to End Tenancy for unpaid rent. The tenant also applied for a rent reduction. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

### Issue(s) to be Decided

Should the Notice to End Tenancy dated February 17, 2016 be cancelled?  
Is the tenant entitled to a rent reduction?

### Background and Evidence

The rental unit is a basement suite in the landlord's house in Mission. The tenancy began December 1, 2016. On February 17, 2016 the landlord served the tenant with a 10 day Notice to End Tenancy for unpaid rent. The Notice said that the tenant failed to pay rent in the amount of \$450.00 that was due on February 1, 2016. At the hearing the landlord testified that the amount stated in the Notice to End Tenancy was an accumulation of amount due for unpaid rent over the preceding months.

The landlord submitted a copy of a tenancy agreement signed on November 27, 2015. The tenancy agreement was for a fixed term of one year with rent in the amount of \$1,000.00, payable on the first of each month. The agreement recorded that a security deposit of \$425.00 was paid on December 1, 2015. The landlord provided copies of cheques given by the tenant. He gave the landlord a cheque in the amount of \$1,275.00 on December 1, 2015 said to be payment of rent and deposit. There were rent cheques for January, February and March, each in the amount of \$850.00.

The tenant said that he was approached by the landlord about renting the suite. He met with her and it was agreed that he would perform yard work including snow shoveling,

lawn cutting and garden care and the rent for the unit would be \$850.00 per month. The reason for the arrangement was because the landlord's disability prevented her from performing this work. He said that the landlord drew up the tenancy agreement showing that rent was \$1,000.00 per month, but there was supposed to be an addendum or side agreement setting out that the tenant was to be paid or credited with the amount of \$150.00 per month for his yard work. The tenant said that the landlord did not draw up the agreement. The tenant said that he performed services including snow shovelling after the tenancy began, but since the landlord began to claim that he was responsible for paying \$1,000.00 per month rent, she has prevented him from performing services. She refused to allow him access to the lawn mower so he could cut the grass.

The landlord acknowledged at the hearing that she did make arrangements with the tenant to perform work to the rental property for a monthly amount of \$150.00. She prepared the tenancy agreement setting the rent at \$1,000.00 per month based on the advice of her insurance agent. She said that the rent was fixed at this amount for liability reasons in case the tenant was injured while performing yard work. The landlord did not prepare a separate agreement with respect to work to be performed by the tenant. She referred to text messages that she exchanged with the tenant. The landlord submitted faxed copies of text messages. Portions of the faxed copies of the messages, particularly the responses from the tenant, were illegible and the messages were of no evidentiary value.

The landlord said that she has reported the tenant's conduct to the RCMP. She complained about his smoking and use of marijuana and she said she refused to allow him access to the lawn mower on the advice of the RCMP.

The landlord testified that she wants the tenant to move out of the rental unit. She has commenced an application for dispute resolution to claim for unpaid rent. The landlord's application is set for hearing in May.

### Analysis

The testimony of the parties established that there was an agreement made that the tenant would perform services including snow shovelling, yard work and grass cutting in exchange for a payment or a rent reduction of \$150.00. The landlord drafted a tenancy agreement providing for a rent payment of \$1,000.00 per month. She was supposed to prepare a separate agreement or addendum to the tenancy agreement to address the services to be provided by the tenant, but she never drafted the document.

The tenancy agreement recorded the payment of a security deposit of \$425.00 which is normally in the amount of one half month's rent, consistent with an actual monthly rent of \$850.00. The tenant paid \$1,275.00 on December 1, 2015 as a security deposit and

rent payment. He paid \$850.00 rent for January and February and it was not until February 17, 2016 that the landlord served a Notice to End Tenancy for unpaid rent claiming that the tenant failed to the full rent beginning December 1, 2016.

I find that there was an arrangement made between the parties whereby the tenant was to perform services in exchange for a rent reduction and the parties acted on that understanding for several months. I find that the landlord's acceptance of an initial payment of \$1,275.00 inclusive of the security deposit is proof of the arrangement.

The landlord has not provided convincing evidence that the tenant failed to pay rent due on February 1, 2016 in the amount of \$450.00 and I therefore allow the tenant's application and order that the Notice to End Tenancy dated February 17, 2016 be, and is hereby cancelled. The tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

### Conclusion

The tenant's application has been allow the Notice to End Tenancy is cancelled. The tenant is entitled to recover the \$100.00 filing fee for his application and I grant the tenant an order under section 67 in the said amount. This order may be registered in the Small Claims Court and enforced as an order of that court. Instead of enforcing the monetary order the tenant may deduct the sum of \$100.00 from a future instalment of rent payable to 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: April 13, 2016

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Residential Tenancy Branch