



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

On February 27, 2017 the Tenant applied for Dispute Resolution to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was scheduled as a teleconference hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

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.

### Preliminary and Procedural Issues

The Landlord provided documentary evidence containing an Application for Dispute Resolution. The Application was not properly filed with the Residential Tenancy Branch and a filing fee was not paid. The Landlord's Application was not properly submitted and is not properly before me, and will not be considered in this hearing.

At the start of the hearing the parties agreed to not interrupt each other's testimony. However; during the hearing, the Landlord occasionally interrupted the testimony of the Tenant. The Landlord had to be cautioned about his behaviour.

### Issues to be Decided

- Did the Tenant pay the rent and should the Notice be cancelled?
- Is the Landlord entitled to an order of possession for unpaid rent?

### Background and Evidence

The Parties testified that the tenancy began in September 2015. Rent in the amount of \$1,250.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$625.00. The Landlord testified that there is no written tenancy agreement.

The Landlord testified that the Tenant did not pay the rent that was due under the tenancy agreement for the month of February, 2017.

The Landlord testified that he issued the Tenant a 10 Day Notice To End Tenancy for Unpaid Rent or Utilities (the Notice) dated February 22, 2017. The Notice states that the Tenant has failed to pay rent in the amount of \$1,250.00 which was due on February 1, 2017.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord testified that the Tenant did not pay the rent owing for February 2017, within five days of receiving the Notice. The Landlord testified that he has not received the February 2017, rent payment from the Tenant since the Notice was issued. The Landlord testified that he did receive a rent payment for March 2017, from the Tenant on February 28, 2017.

The Landlord testified that at the start of the tenancy the parties agreed that the Tenant is to pay the rent by placing a cheque in a mailbox by the road. The Landlord testified that the Tenant has paid the rent in this manner on many occasions. The Landlord testified that the mailbox is not secured or locked and that anybody could open the mailbox.

The Landlord testified that initially the Tenant did not have a bank account, but he opened an account and issued the Landlord a cheque that bounced so the Tenant started to pay the rent using bank drafts.

The Landlord disputes that someone stole the cheque. The Landlord's agent P.J. submitted a letter dated March 3, 2017, which indicates that she checked the mailbox for mail while the Landlord was away. She submits the Tenant's cheque was not in the mailbox. She submits that on one occasion she noted there was no mail, so she checked with the Landlord's son who informed her that he had collected the mail. She

submits that while it could be disputed that someone stole the Tenant's cheque - that could be disputed. She submits that mail theft in the area is at community mailboxes and that the area surrounding the mailbox is more rural. The Landlord submitted that the mailbox is not readily visible from the street.

The Tenant responded that he paid the rent that was due for the month of February 2017. The Tenant testified that he paid the rent by placing a bank draft in the mailbox as directed by the Landlord. He testified that he placed the cheque in the mailbox on January 31, 2017. He testified that he has paid his rent in this manner on many occasions. The Tenant testified that the Landlord never issues rent receipts so he is unable to provide a receipt.

The Tenant testified that he paid the rent using a bank draft and that he paid for the bank draft in cash. The Tenant testified that since he paid cash for the bank draft there is no bank record. He submitted that he has no idea if the payment was ever cashed.

In response, the Landlord argued that in order for the Tenant to get a bank draft he must have an account and the account would show a record of transaction. The Landlord argued that the Tenant should provide a bank record. The Landlord did not provide any evidence to back up the submission that a bank account is required in order to get a bank draft.

The parties testified that they have participated in previous arbitration hearings during the tenancy, but the issues in dispute were not related to the issuance of a Notice to end tenancy for non-payment of rent.

### Analysis

The Tenant provided affirmed testimony that he paid the rent and the Landlord provided affirmed testimony that he never received the rent.

I find that the Landlord directed the Tenant to place rent payments into an unsecured mailbox that was accessible to the public. By directing the Tenant to pay rent in this manner, the Landlord is taking a risk that rent payments could be stolen. The Landlord was aware the Tenant paid his rent using bank drafts. The Landlord's own evidence that another party accessed the mailbox and retrieved mail supports my finding of risk.

The Landlord testified that there are no issues of non-payment of rent in the past, and the Landlord testified that that Tenant paid his rent for the following month on time.

There is insufficient evidence from the Landlord to support the submission that a person must have a bank account in order to get a bank draft.

I accept the Tenant's testimony that he paid the rent for February 2017, by placing a bank draft in the mailbox. While the Landlord may not have received the bank draft, there is insufficient evidence from the Landlord to establish that the Tenant failed to pay the rent.

The Tenant's application is successful. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 22, 2017, is set aside. The tenancy will continue until ended in accordance with the Act.

The parties are encouraged to adopt a more secure method for payment of rent.

#### Conclusion

The Tenant's application is successful. The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the Landlord dated February 22, 2017, is cancelled.

The tenancy will continue until ended in accordance with the Act.

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: March 27, 2017

---

Residential Tenancy Branch