



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WS Bernard Investment  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNR, O

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants for an order cancelling a notice to end the tenancy for unpaid rent or utilities and for an order that the landlord provide services or facilities required by the tenancy agreement or law.

Both tenants and the landlord attended the hearing, and the landlord and one of the tenants gave affirmed testimony. The parties were given the opportunity to question each other and give closing submissions. No issues with respect to service or delivery of evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act* or should it be cancelled?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on October 1, 2014 and expired after a year and then reverted to a month-to-month tenancy, and the tenants still reside in the rental unit. Rent in the amount of \$850.00 per month was originally payable on the last day of each month for the following month, and was raised to \$874.00 per month during the tenancy and effective October 1, 2017 it was increased again to \$906.00 per month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$425.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is one of 37 units in an apartment complex and the landlord also lives there. A copy of the tenancy

agreement has been provided, but does not indicate how long the fixed term lasts or when the fixed term ends.

The landlord further testified that the tenants were personally served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by another person, but the landlord does not know to whom it was given. A copy of the notice has been provided as evidence for this hearing. It is dated August 1, 2017 and contains an effective date of vacancy of August 10, 2017 for unpaid rent in the amount of \$425.00 + \$30.00 = \$455.00 that was due on July 1, 2017. The \$30.00 amount is for late fees, although the tenancy agreement does not specify late fees, and the landlord has not previously charged the tenants any late fees. However, the tenants didn't pay all of August, 2017 rent. The tenants are roommates and one of the tenant's rent cheques was received by the landlord, but not the other one.

Rent for September and October, 2017 has been paid. The landlord prepared receipts for those payments, but has not provided copies for this hearing. The landlord testified that the receipts do not indicate that the rent for those months was being accepted for use and occupancy only.

Rent for each of the tenants individually is paid directly to the landlord by a government Ministry, but one of the cheques was not received by the landlord, as well as others in the complex. The landlord's spouse slid a note under the tenants' door stating that the rent cheque was not received. The tenant went to the Ministry to find out why rent wasn't paid and sent an email to the landlord about paperwork, but there was no attempt to pay August rent.

The landlord testified that the owner wants an Order of Possession.

**The tenant** testified that her roommate's rent cheque was received by the landlord, but the other didn't show up and only one name shows on the notice to end the tenancy. Further, the notice was not personally served, but taped to the door, and the tenancy agreement is missing some information; there has been some sloppy work by the landlord.

On July 28, 2017 the tenant received a note under the door saying that the cheque didn't show up for rent. The Ministry pays the tenant's share except for \$12.00 and the tenant paid that amount on July 31, 2017. The tenant texted the landlord, and upon not hearing back from the landlord, the tenant went to the Ministry on August 1, 2017 and upon returning home, found the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities taped to the door. The Ministry gave the tenant a computer print-out showing that a cheque was sent to the landlord, and a copy has been provided as evidence for

this hearing. The Ministry also gave the tenant a Declaration and the landlord needed to sign it in order to have the cheque replaced. The tenant put both documents in the landlord's rent cheque mailbox and emailed the landlord the same day. The tenant received no response from the landlord, so the tenant left a note and a phone message for the landlord on August 3. The tenant received back the \$12.00 cheque stapled to a note again slid under the tenants' door saying it was the tenant's responsibility to ensure rent was paid on time.

A person from the Ministry told the tenant that the landlord had advised that the tenant was to put the Declaration back in the mailbox and that either the landlord or spouse would sign it and put it back under the tenants' door. However, the landlord just stamped the form with an illegible stamp so the Ministry put a stop payment on the rent cheque and didn't re-issue the cheque.

### Analysis

The *Residential Tenancy Act* allows a landlord to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on any day after the day rent is payable. However, the landlord must not refuse rent, and it's clear to me that the landlord received \$12.00 and returned it to the tenant.

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities is addressed to one tenant only. Where tenants are roommates and one tenant is evicted, the tenancy ends for all tenants because the tenancy agreement specifies both names and the full amount of rent.

Also, where a landlord accepts rent after the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the landlord must provide the tenant with a receipt or some other notice in writing that the money is being accepted for use and occupancy only and does not serve to reinstate the tenancy. In this case, the landlord collected rent for 2 months beyond the effective date of vacancy without giving any such notice to the tenants, and as such, I find that the landlord has in fact reinstated the tenancy. Therefore, I cancel the notice.

The tenant did not lead any testimony about services or facilities, however the landlord testified that the tenancy agreement provides for parking for 1 vehicle. I accept that, but having not heard from the tenants on that point, I decline to make any orders or other findings. The tenants' application with respect to services or facilities is dismissed with leave to reapply.

Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 1, 2017 is hereby cancelled and the tenancy continues.

The balance of the tenants' application is hereby dismissed with leave to reapply.

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: October 03, 2017

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Residential Tenancy Branch