



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

On October 16, 2020, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

The matter was set for a conference call hearing. The Tenants and Landlord attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by the Landlord. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Issues to be Decided

- Was there a fundamental breach of the tenancy agreement with respect to payment of rent?
- Is the tenancy ending and is Landlord entitled to an order of possession?

### Background and Evidence

The Landlord and Tenants testified that the tenancy began on February 1, 2016 and is on a month to month basis. Rent in the amount of \$1,000.00 is due to be paid to the Landlord by the first day of the month.

The Landlord testified that the Tenants failed to pay the rent due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2020, ("the 10 Day Notice").

The 10 Day Notice provides that the Tenants has failed to pay rent in the amount of \$1,000.00 which was due on October 1, 2020. The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days. The Landlord testified that the Tenant did not pay the \$1,000.00 rent due under the tenancy agreement within 5 days of receiving the 10 Day Notice.

The Landlord testified that in July 2018 the Tenants proposed to pay an extra \$100.00 each month for rent in order to be permitted to keep a dog with them on the residential property. The Landlord testified that the Tenants paid the \$100.00 from July 2018 to November 2019. The Landlord testified that the Tenants stopped making the extra payment after making the November 2019 payment.

The Landlord submitted that the Tenants decided to withhold payment of October 2020 rent because they feel that the \$100.00 payments amount to an overpayment of rent.

The Tenants testified that in June 2017 a family member began staying with them at the rental unit along with his dog. The Tenants stated that the Landlord permitted the additional occupant to stay for an additional \$200.00 rent each month. The Tenants testified that the Landlord said yes to the dog in June 2017. When the family member moved out a year later, the dog remained behind with the Tenants.

The Tenants testified that they spoke to the Landlord in July 2018 and the parties agreed that the dog could remain in the unit for an additional \$100.00 each month. The Tenants testified that the Landlord was aware the dog was living in the unit for one year prior to the Landlord starting to collect \$100.00 each month.

The Tenant was asked what the additional rent amount was going towards; such as a deposit, or extra wear and tear on the residential property. The Tenant testified that there is no written agreement and he did not know what the Landlord intended.

The Tenant testified that they began having difficulties with another occupant living in a separate unit on the residential property and were not satisfied with the Landlords response to their concerns. They stated that this prompted them to review the Act and discover that charging additional rent for the dog is not permitted. The Tenants deducted the rent over payment from the October 2020 rent.

The Tenants testified that they initially paid the additional rent amount because they wanted to keep the dog. The Tenants stated they stopped paying the additional rent when they determined the payment was not permitted.

### Analysis

Section 26 of the Act provides that a tenant must pay the rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations, or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

With respect to a right to deduct a portion of rent, section 19(2) of the Act provides that if a landlord accepts a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent, the tenant may deduct the overpayment from rent or otherwise recover the overpayment. Section 43(5) of the Act provides that if a landlord collects a rent increase that does not comply with this part, the tenant may deduct the increase from rent or otherwise recover the increase.

Section 13(2) of the Act provides that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the agreed terms in respect to the amount of rent payable for a specified period, and, if the rent varies with the number of occupants, the amount by which it varies.

Estoppel is a legal principle which bars a person from asserting a legal right due to that person's actions, conduct, statements, admissions, or failure to act, especially when the earlier representation has been relied upon by others.

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

In June 2017 when the Landlord gave permission for the dog to live at the rental unit, the Landlord could have required payment of a pet damage deposit at that time. I find that the Landlord did not require payment of a pet damage deposit and may not require a deposit at any other time.

Since the Landlord permitted the dog in June 2017, the Landlord should not have sought additional rent starting June 2018 in order for the Tenants to keep the dog. I find that there was no term in the tenancy agreement that required the Tenants to pay additional rent depending upon the number of occupants in the unit, or for the presence of a pet. For these reasons, I find that the Landlord is estopped from preventing the Tenants to keep the dog and from requiring the Tenants to pay any pet damage deposit, or additional monthly rent for being permitted to keep the dog.

I find that the \$100.00 payments that the Tenants paid to the Landlord amount to an overpayment of rent/ illegal rent increase. I find that the Act permits the Tenants to deduct this over payment from the rent.

I find that the Tenants did not fail to pay the rent due for October 2020. The Landlords 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2020 is cancelled.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenants to deduct \$100.00 from one (1) future rent payment.

### Conclusion

The Tenants had a right under the Act to apply an overpayment of rent towards October 2020 rent.

The Landlords 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 16, 2020 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: January 12, 2021

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Residential Tenancy Branch