



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR

### Introduction

Some documentary evidence, photo evidence, and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request for an order cancelling a Notice to End Tenancy that was given to the tenant for non-payment of rent.

### Background and Evidence

The applicant testified that:

- On May 31, 2010 she dropped her rent into the drop box provided by the landlords for paying the rent.
- The rent was sealed in an envelope and consisted of a cheque for \$550.00, and cash totalling \$575.00, for overall total of \$1125.00 to cover the \$1100.00 rent and the \$25.00 parking fee
- The landlord later informed her that when he emptied the box on the morning of June 1, 2010 he did not find her envelope in the box.

- The landlords subsequently served her with a Notice to End Tenancy for non-payment of rent.
- She suspected that someone reached into the box and stole her cheque, and to prove that the box was not secure, on July 1, 2010, she reached into the box and was able to remove both the envelope she had just put in, and an envelope that had been put in by another tenant.
- She took a photo of herself reaching into the box, and a photo of the envelopes she had removed.
- She then returned the envelope to the person who had deposited it and he has supplied her with a letter stating such.

The applicant is therefore requesting that the Notice to End Tenancy be cancelled because she paid her rent in a drop box provided by the landlord and it is not her fault if it was later stolen.

The respondent testified that:

- There have never been any thefts from the drop box in the past seven years.
- When tenants move-in they are verbally informed that rent is supposed to be paid by cheque or money order through the drop box.
- Tenants are also verbally informed that if they want to pay cash they should phone the landlord and it will be picked up.
- The rent payment instructions are not given in writing, they are only given verbally.
- He has seen the photos provided by the tenant, and he does not dispute that it is likely that someone could reach in and remove envelopes, but it has never happened before.
- He finds it very suspicious that although there were 12 other deposits made into the drop box at same time, two of which were cash, the only envelope removed was the one the applicant claims to have put in the box.

The respondent is therefore requesting that the Notice to End Tenancy be upheld.

In response to the landlord's testimony the applicant stated:

- The landlord had never told her that payments were to be made by cheque or money order only, or to call if she wanted to make a cash payment.
- There is nothing posted by the drop box stating that payments should be made by cheque or money order only, and the notice in the hall only states that cheques or money orders are preferred, it does not say not to pay by cash.

## Analysis

When the landlord provides a drop box for rent payments, it is the landlord's responsibility to ensure that it is a secure method of receiving rent payments, and it's obvious in this case the drop box is not secure.

Further when the landlord informs the tenant that rents may be paid through a drop box, that rent is considered paid once it is deposited into the box by the tenant, and if the rent is subsequently stolen from the box, the loss must be borne by the landlord not the tenant.

Therefore since the tenant has testified that she did drop the full rent for the month of June 2010 into the drop box, and there is no evidence to show that she did not, it is my decision that the landlord must bear the loss of the \$575.00 cash, and that the tenants need only replace the \$550.00 that was paid in the form of a cheque, as there is no evidence to show that the allegedly stolen cheque has been cashed.



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

The \$550.00 is due and payable immediately, and if it is not paid the landlord does have the right to issue another 10 day Notice to End Tenancy, however due to the circumstances I am setting aside the original 10 day Notice to End Tenancy.

## Conclusion

The Section 46, 10 day Notice to End Tenancy dated June 16, 2010, is hereby cancelled and this tenancy continues.

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: August 11, 2010.

---

Dispute Resolution Officer