



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, CNR, MNDC, OLC, RR

### Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 10 Day and a 1 Month Notice to End Tenancy; a monetary order for cost of emergency repairs, and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; an order directing the landlord to comply with the Act, regulation, or tenancy agreement; and to allow a tenant to reduce rent for repairs, services, or facilities agreed upon but not provided.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Landlord G.G. testified that the evidence was served on the tenants by email sent on March 23<sup>rd</sup>, 2011. Tenant B.S. testified that he received no evidence from the landlord. Section 88 of the *Residential Tenancy Act* describes the methods by which service of documents is permitted. Email is not an approved method; since the tenants did not receive the documents I find that the landlord's evidence cannot be considered in my decision. I did however consider the landlord's testimony.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of either or both notices to end tenancy?

Is the tenant entitled to a Monetary Order, and if so for what amount?

Is the tenant entitled to reduced rent?

Should the landlord be ordered to comply with the Act, regulation, or tenancy agreement?

### Background and Evidence

The rental unit consists of the upper level of a single detached home. Pursuant to a written agreement, the fixed term tenancy was based on one year starting on November 1<sup>st</sup>, 2010. The rent is \$1,100.00 payable on the first of each month, and the tenant paid a security deposit of \$550.00. A condition inspection report was not completed at the start of the tenancy.

S.A., the landlord's agent, testified that the tenants were served the 10 Day Notice to End Tenancy on March 4<sup>th</sup>, 2011 in person. She stated that on March 11<sup>th</sup>, 2011, she received the tenants' cheque for \$683.41 and a cheque post dated to March 30<sup>th</sup>, 2011 for \$105.96. She submitted that rent was not paid within 5 days of the Notice to End Tenancy and made an oral request for an Order of Possession.

Tenant B.S. testified that he always paid rent on time when the landlord used to live in the basement. He said that when landlord R.T. moved in February 2011, he did not provide the new forwarding address or instructions concerning payment of rent. He said that on February 28<sup>th</sup>, 2011, G.G. instructed him to go to R.T.'s bank, to mention his name and to have the teller deposit the rent into his account. B.S. said that he went to the bank but was informed that he could not perform this transaction without the landlord's account number. B.S. stated that he did not hear anything further from the landlord until he received the 10 Day Notice to End Tenancy from S.A. He said that in the absence of any other address, he mailed the rent to S.A. on March 7<sup>th</sup>, 2011.

Tenant B.S. stated that the unit was not cleaned at the start of the tenancy, and that it required a considerable amount of work and repairs. He stated that he entered into a verbal agreement with the landlord concerning several repairs.

B.S. said that a by-law enforcement notice resulted in the landlord causing significant damage to the back yard which B.S. states that they can no longer enjoy. To support this claim, B.S. provided 23 colour photographs showing in part the current muddy and un-kept condition of the back yard, as well as interior pictures of a leaky sink, damaged blinds, and a broken bathroom shower head. In his documentary evidence, tenant B.S. provided a Monetary Order Worksheet for the sum of \$3,257.88 updated as follows:

- Cleaning:	\$ 420.00
- \$300./ month for loss of use of the backyard for 5 months:	\$1,500.00
- \$200.00/month for use of other grounds for 5 months:	\$1,000.00
- Time and gas for trips to and fro post office:	\$ 200.00
- New Total:	\$3,120.00

Concerning the post dated cheque of \$105.96; B.S. stated that this amount was originally deducted from the rent for emergency repairs, however he became suspicious of the landlord's motives and therefore submitted a cheque should the landlord claim that amount at the hearing. B.S. also stated that the landlord was aware that he owned a dog. He said that the landlord pointed to the back yard and indicated to the tenants that they could even keep up to 14 chickens.

Landlord G.G. argued that the tenant rented the upper portion of the house, which included use of the front yard only. She stated that the back yard was intended for the downstairs tenant. She stated that the condition of the unit was not in the state which B.S. claimed, and that he had already been compensated for rent reductions of \$100.00 for November 2010, \$100.00 for December 2010, and free rent for January 2011.

### Analysis

Concerning the 10 Day Notice to End Tenancy; it was the tenants' practice to pay rent in cash on the first of each month while the landlord lived in the rental unit.

That practice ceased when the landlord moved out on February 12<sup>th</sup>, 2011. The landlord provided instructions to pay rent which could not be fulfilled through no fault of the tenants. In the absence of clearer directions, the tenant mailed the rent to the landlord's agent on March 7<sup>th</sup>, 2011, which is within 5 days of the allowed timeframe by which rent must be paid following service of the 10 Day Notice to End Tenancy. I find in the circumstances that the posted date is the date rent was paid and therefore the 10 Day Notice to End Tenancy is of no effect. Concerning the \$105.96, the landlord presented no contradictory evidence and I find that the cheque for \$683.41 was the correct amount paid for rent. Neither the landlord nor his agent entered evidence concerning the 1 Month Notice to End Tenancy. I heard no submissions to support that the tenants significantly interfered with or unreasonably disturbed another occupant or the landlord, or that the tenants put the landlord's property at significant risk. Therefore I also find that notice is of no effect.

This tenancy has been fraught with communication problems since the beginning. Nevertheless, Sections 23(3), (4), and (5) of the Act place the onus to complete condition inspection reports on the landlord. The landlord's testimony was not supported by these reports. The landlord suggested that the tenant's claim concerning the condition of the unit is exaggerated. However the tenant's testimony and documentary evidence support that the rental unit required repairs and cleaning; his documentary evidence also showed that he did a significant amount of work. Tenant B.S. did not dispute landlord G.G.'s testimony that she compensated him for the work performed. Therefore I find that the parties already settled this issue and that the tenants are not entitled to further compensation.

Concerning the tenants' \$200.00 claim for travel to and from the post office, other than the filing fee litigation costs are not recoverable under the Act.

Concerning the loss of use of the backyard, I find on the balance of probabilities that the tenants believed that they could use the back yard.

The landlord's argument that they could only use the front yard is not supported by evidence. Section 7(2) of the *Act* states in part that a tenant who claims for compensation for damage or loss must do whatever is reasonable to minimize the damage or loss. The tenant's only submission regarding the loss of use of the backyard centered on his dog. He provided photographs that showed mud tracks where grass used to grow. I am not persuaded that this loss is so significant that he has no other alternative than to use other grounds, particularly in light of the availability of a front yard. I find that a combined rent reduction of \$500.00 per month for 5 months and \$2500 in related costs are not justified over this portion of the claim. I award the tenant \$50.00 per month for the sum of \$250.00 which he can deduct from the May 2011 rent.

### Conclusion

The landlord's 10 day and 1 Month Notices to End Tenancy are hereby set aside. The tenancy continues in full force and effect.

I hereby authorize the tenants to withhold \$250.00 from the rent due on May 1<sup>st</sup>, 2011.

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 31, 2011.

---

Residential Tenancy Branch