



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was scheduled to hear the applicant's request to cancel a Notice to End Tenancy for Unpaid Rent. Both the applicant and respondent appeared at the hearing and were provided the opportunity to be heard.

At the commencement of the hearing, the respondent requested an Order of Possession.

### Issues(s) to be Decided

Does the Residential Tenancy Act apply to this situation and do I have jurisdiction to resolve this dispute?

### Background and Evidence

The applicant testified that she began residing at the property on December 1, 2008 and that she is required to pay the respondent \$1,800.00 per month which includes a \$200.00 component for a "rent to own" agreement. The respondent acknowledged that a portion of the monthly payment was for "rent to own" agreement and referred to certain requirements that needed to be met to continue the with purchase agreement.

The applicant acknowledged that she had not paid the respondent since July 2009 due to damage to the property from a leaking rook; however, the applicant stated that since making this application she has been making payments towards the arrears and is almost caught up. The applicant stated that she was in the process of obtaining financing to purchase the property from the respondent.

Neither party provided a copy of a tenancy agreement for my review but a copy of the *10 Day Notice to End Tenancy for Unpaid Rent* was provided which indicated \$5,400.00 in rent was outstanding. Documentary evidence indicates the \$5,400.00 outstanding was comprised of three monthly payments of \$1,800.00. Also provided was a copy of a handwritten note from the respondent to the applicant which refers to a "breach of contract" but not specifically a tenancy agreement.

Upon informing the parties that I was not satisfied that a tenancy existed or that I would grant an Order of Possession without documentary evidence of tenancy agreement, the landlord suggested I accept a previous dispute resolution decision where the Dispute Resolution Officer found that the Act applied after the respondent read a few sentences from the first page of the contract. It was explained to the parties that each proceeding is determined on its own merits and that documentary evidence intended to be relied upon for a particular hearing must be provided prior to a scheduled hearing in support of a party's position or claim.

## Analysis

The burden to prove that a tenancy exists is upon the party making the application. After hearing verbal testimony of the parties, I have reservations that a tenancy exists apart from a rent-to-own agreement and I am not certain of the terms of tenancy if one does exist. While a tenancy agreement is a contract, reference to a contract in the respondent's note to the applicant does not equate to the existence of a tenancy agreement and nor does the issuance of a 10 Day Notice to End Tenancy. Therefore, I found there was insufficient evidence before me for me to find a tenancy is in existence.

Upon review of the dispute resolution decision under file no. 725958, a previous decision issued to these parties May 21, 2009, I note that the Dispute Resolution Officer recorded hearing that rent was \$1,800.00 per month. During the hearing I conducted I heard that the monthly payment was comprised of \$1,600.00 for rent and \$200.00 was for the purchase agreement component. This is a discrepancy that I cannot reconcile without examining the contract between the parties. Therefore, without a copy of a tenancy agreement I find the parties have not substantiated a tenancy relationship or the amount of rent owing, if any.

In light of the above, I decline to find jurisdiction in this matter based on the evidence before me and I make no decision to set aside the Notice or grant an Order of Possession.

If the parties are of the position that a tenancy is in existence to which the Act applies, the parties are at liberty to make a subsequent application and should be prepared to show a tenancy exists and its terms by submitting sufficient documentary evidence.



# Dispute Resolution Services

Page: 3

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## Conclusion

I was not provided sufficient evidence to find the existence of a tenancy agreement or the terms of the tenancy if one does exist. Therefore, I declined to find jurisdiction to resolve this dispute.

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: November 06, 2009.

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Dispute Resolution Officer