



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CLIFTON HOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution made by the tenant to cancel a notice to end tenancy for unpaid rent and utilities.

The tenant appeared for the hearing and testified that she served the Notice of Hearing documents personally to the building manager who is the agent of the landlord. The landlord failed to appear for the hearing and in the absence of any evidence from the landlord to dispute this, I find that the tenant served the documents relating to this hearing in accordance with Section 89(1) (b) of the *Residential Tenancy Act* (referred to as the Act).

The tenant provided affirmed testimony and a copy of the notice to end tenancy which has been carefully considered in this decision. No evidence was provided by the landlord prior to this hearing despite being served notice of the hearing in accordance with the Act.

### Issue(s) to be Decided

- Has the tenant established that the notice to end tenancy ought to be cancelled?

### Background and Evidence

The tenant testified that the tenancy started about three and half years ago. According to the tenant, no written tenancy agreement was completed for this month to month tenancy. The tenant paid the landlord around \$200.00 in a security deposit before the tenancy began. Rent was established by the landlord and tenant per month at \$490.00, payable by the tenant on the first day of each month.

The tenant testified that she received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 1, 2013. The tenant provided the notice as evidence for this hearing. The notice states that the outstanding amount of rent is \$490.00 that was due on October 16, 2013, and has an effective move out date of November 15, 2013. The notice to end tenancy issued to the tenant was provided on Residential Tenancy Branch (RTB) form number 30 and contains an RTB issue date for the form of June, 2007. Both pages of the two page form were served to the tenant and provided as evidence for the hearing.

The tenant testified that she did owe the landlord rent but she was confused as to the exact amount. The tenant testified that she had paid rent for November and December, 2013 to the landlord and the landlord had accepted the rent for these months. The tenant testified that she assumed that the tenancy resumed as normal and confirmed that she had not been issued any documentation that the money was being accepted by the landlord for use and occupancy only.

The tenant testified that she will contact the landlord after the hearing to discuss the issue of the outstanding rent.

### Analysis

The Act states that a landlord must issue a notice to end tenancy for unpaid rent or utilities in the approved form. The landlord issued the tenant with an old version of the approved notice to end tenancy with the new version having a Residential Tenancy Branch issue date of August 2012 at the time of writing this decision.

However, the Act does allow an Arbitrator to consider forms that deviate from an approved form but are not intended to mislead the tenant, for validity. In this case, I find that whilst the landlord did not use the current and most up to date approved form, the contents of the notice to end tenancy issued to the tenant on November 1, 2013 were not misleading and detrimental to the tenant and contained sufficient information documenting the tenant's and landlord's rights and obligations with respect to the notice.

The effective date of the notice to end tenancy was November 15, 2013. Whilst the tenant failed to dispute the notice to end tenancy within the 5 days provided under the Act, the application was made before the effective date of the notice, namely on November 12, 2013. More importantly the tenant testified that the landlord had accepted rent from her on December 1, 2013, being after the effective date of the notice to end tenancy.

Policy Guideline 11 to the Act states that if the landlord accepts the rent for the period after the effective date of the notice, the intention of the parties will be in issue. In this case, the landlord failed to appear for the hearing or provide any documentary evidence prior to this hearing which could determine the landlord's intent and reasoning for accepting money after the effective date of the notice.

Therefore, I rely on the undisputed testimony of the tenant and on the balance of probabilities, to determine that the landlord, by accepting money after the effective date of the notice and not providing the tenant with a clear intention of the reasoning behind accepting the December, 2013 rent, re-instated the tenancy.

Based on the above circumstances, I find that it is appropriate for me to set aside the notice to end tenancy issued to the tenant on November 1, 2013 by the landlord and the tenancy will resume until it is ended in accordance with the Act.

### Conclusion

For the reasons set out above, I set aside the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued by the landlord to the tenant on November 1, 2013.

I also cautioned the tenant with regards to her obligations to pay rent under the Act and that the landlord is at liberty to issue another notice to end tenancy if rent is still outstanding.

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 02, 2014

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Residential Tenancy Branch

