



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with a tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the hearing, the landlords orally requested that they be provided with an Order of Possession.

### Issue(s) to be Decided

1. Did the tenant present a basis to cancel the 10 Day Notice to end Tenancy for Unpaid Rent?
2. Are the landlords entitled to an Order of Possession?

### Background and Evidence

The tenancy commenced in November 2014 and the tenant paid a security deposit of \$382.50 and pro-rated rent for November 2014. The tenant was required to pay rent of \$765.00 on the 30<sup>th</sup> day of every month although the landlord has a practice of accepting rent on the 1<sup>st</sup> day of every month. For the month of December 2014 the landlord required the tenant to pay rent in the amount of \$515.00 after deducting a \$250.00 "move-in allowance". The tenant failed to pay the rent for December 2014 and on December 30, 2014 the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 1<sup>st</sup> Notice) on the tenant's door. I was not provided a copy of the 1<sup>st</sup> Notice; however, the landlord acknowledged that it contained some errors and after the tenant did not pay rent for January 2015 he issued a second 10 Day Notice to End Tenancy for Unpaid Rent (the subject Notice) on January 14, 2015 indicating rent of \$1,280.00 was outstanding.

I noted that the subject Notice indicates the \$1,280.00 was due on December 1, 2014. Both parties were of the understanding and agreement that this amount is the sum of \$515.00 that was due as of December 1, 2014 and \$765.00 that was due on January 1, 2015.

The tenant did not pay the outstanding rent indicated on either of the 10 Day Notices served upon her and filed to dispute the subject Notice on January 21, 2015. Nor, has the tenant paid any rent for February 2015.

In filing this application, the tenant requested the subject Notice be cancelled due to hardship as eviction will leave her homeless. The tenant acknowledged that she owes the rent as indicated on the 10 Day Notice and explained that she had suffered financial difficulties including a recent theft. The tenant acknowledged that she does not have the rental arrears and has accepted that she will have to move out of the rental unit even though she will be homeless.

The landlords orally requested that they be provided an order of Possession effective as soon as possible.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution.

In this case, I was presented a copy of the 10 Day Notice issued by the landlord on January 14, 2015. Based upon the undisputed evidence before me, I am satisfied that as of that date the tenant owed the landlord rent of \$1,280.00 for the months of December 2014 and January 2015. Since both parties understood and agreed that the amount of \$1,280.00 represented rent for both months, I amend the subject 10 Day Notice in accordance with Residential Tenancy Branch Policy Guideline 11: *Amendment and Withdrawal of Notices* and section 68 of the Act to indicate that amount was outstanding as of January 1, 2015.

In this case, the tenant requested that I cancel the Notice on the basis of hardship. The Act does not provide me the authority to cancel a Notice on that basis. In fact, I find no

legal basis in which to cancel the 10 Day Notice dated January 14, 2015 and the tenant's application is dismissed.

With respect to the landlords' request for possession of the rental unit, section 55(1) of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I am satisfied that all of the criteria of section 55(1) of the Act have been met and I provide to the landlords an Order of Possession effective two (2) days after service upon the tenant.

#### Conclusion

The tenant's application has been dismissed. Pursuant to section 55(1) of the Act, the landlords have been provided an Order of Possession effective two (2) days after service upon the tenant.

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: February 10, 2015

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Residential Tenancy Branch

