



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KENSTONE PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, O

### Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 55; and
- an "other" remedy.

The tenant did not attend this hearing, although I waited until 1107 in order to enable the tenant to connect with this teleconference hearing scheduled for 1100. The landlord's agents attended the hearing.

### Preliminary Issue – Withdrawal of Other Remedy

At the hearing I asked the agent what "other" remedy the landlord sought. The agent could not tell me to what the remedy relates. The agent asked to withdraw that portion of the landlord's application. Paragraph 64(3)(c) allows me to amend an application for dispute resolution. I allowed this amendment as there is obviously no prejudice to the tenant in doing so.

### Preliminary Issue – Failure to Provide Evidence of 10 Day Notice

The landlord did not supply any documentary evidence in support of its application, including any copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice).

In an application for an order of possession for unpaid rent, the landlord bears the onus of proving, on a balance of probabilities, that:

1. the tenant owed rent pursuant to a tenancy agreement;
2. the tenant failed to pay rent when it was due;
3. the landlord properly completed and served a 10 Day Notice to the tenant;
4. the tenant failed to pay the outstanding rent within the five days provided for under subsection 46(4); and
5. the landlord has not reinstated the tenancy.

In this case, the landlord did not supply any documentary evidence. The only evidence the agent proposed to provide was oral testimony. The agent informed me that the tenant was refusing to pay his rent and that the landlord sought an order of possession.

While I have no reason to disbelieve any testimony that would have been provided by the landlord's agents, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence, such as the 10 Day Notice, is available that could easily substantiate the landlord's case: The best evidence available should be provided.

Rule 3.19 of the *Residential Tenancy Branch Rules of Procedure* (the Rules) provides that I may direct that evidence be submitted after the commencement of a hearing. The Rule provides that I must give both parties an opportunity to be heard on the question of admitting such evidence. As the tenant was not in attendance, I could not give the tenant an opportunity to be heard. Accordingly, I cannot satisfy the procedural requirements of Rule 3.19 and refused to direct evidence be accepted after the conclusion of the hearing.

I explained to the landlord's agent at the hearing that without seeing a copy of the 10 Day Notice I would dismiss the landlord's application with leave to reapply. I offered the landlord an opportunity to request an adjournment so that the landlord could file and serve the necessary documentary evidence. I explained that an adjournment may take longer to be scheduled than reapplying, but would save the landlord the expense of an additional filing fee. The landlord declined an adjournment.

On the basis that the landlord failed to provide the necessary documentary evidence to substantiate its claim, I dismiss the landlord's claim with leave to reapply.

Conclusion

The landlord's claim is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: May 01, 2015

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Residential Tenancy Branch

