



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CHELSEA MANOR APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPR

### Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 55.

The tenant did not attend this hearing, which lasted approximately 23 minutes. The landlord's agent, GG ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the resident manager and that he had authority to represent the landlord company named in this application as an agent at this hearing.

The landlord testified that he personally served the tenant with a copy of the landlord's application for dispute resolution hearing package ("Application") on March 21, 2015. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was served with the landlord's Application on March 21, 2015.

### Preliminary Issue – Amendment of Landlord's Application

At the outset of the hearing, the landlord requested an amendment of the landlord's Application to add a monetary order of \$850.00 for unpaid April 2015 rent and to recover the \$50.00 filing fee for this Application. The landlord stated that he did not initially apply to recover the filing fee because he assumed that the Application would resolve with the tenant prior to this hearing. The landlord also stated that at the time the Application was filed on March 17, 2015, April 2015 rent was not yet due and he did not realize he could apply for a future loss of rent.

The landlord did not apply for a loss of April 2015 rent or to recover the filing fee in his initial Application. As the tenant did not attend this hearing, she had no notice that the landlord intended to apply for a monetary order at the hearing itself. The tenant has a right to know the case to be met, prior to the hearing, in order for her to have a full opportunity to respond. Amending the landlord's Application at the hearing would be highly prejudicial to the tenant, as she did not have any notice or a chance to respond to the landlord's claims. Accordingly, I advised the landlord at the hearing that I was denying his request to amend the landlord's

Application to request a monetary order of \$850.00 for unpaid April 2015 rent and to recover the \$50.00 filing fee for the Application.

### Issue to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

### Background and Evidence

The landlord testified that this tenancy began on January 1, 2015 for a fixed term of one year. The tenant continues to reside in the rental unit. Monthly rent in the amount of \$850.00 is payable on the first day of each month. A security deposit of \$425.00 was paid by the tenant on December 10, 2014. The landlord provided a copy of the written tenancy agreement with the landlord's Application.

The landlord testified that he was seeking an order of possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 2, 2015, with an effective move-out date of February 13, 2015 ("previous 10 Day Notice"). The landlord testified that a "previous hearing" was conducted at the Residential Tenancy Branch (RTB) on March 5, 2015 where the landlord requested an order of possession for unpaid rent based on the previous 10 Day Notice against this same tenant at the same rental unit. A "previous decision" by another arbitrator was issued on March 9, 2015, the file number of which appears on the front page of this decision. The landlord testified that the previous decision indicated that the landlord failed to provide any documentary evidence at the previous hearing and his application was dismissed without leave to reapply. The landlord stated that he was reapplying for an order of possession based on the previous 10 Day Notice because he now has documentary evidence for this hearing.

The landlord further testified that he issued a "new 10 Day Notice" to the tenant in April 2015 but that it was not in existence at the time that he filed his Application in March 2015. The landlord stated that he was seeking an order of possession on the basis of this new 10 Day notice, if his Application was denied on the basis of the previous 10 Day Notice.

### Analysis

In his Application and at this hearing, the landlord confirmed that he was seeking an order of possession based on the previous 10 Day Notice. In the previous hearing, the landlord applied for an order of possession on the basis of the previous 10 Day Notice against the same tenant at the same rental unit, arising out of this tenancy. This issue has already been dismissed without leave to reapply by the Arbitrator who presided over the previous hearing. Therefore, I am *res judicata* and unable to issue an order of possession for unpaid rent to the landlord, as the issue has already been subject to a final and binding decision by another Arbitrator appointed under the *Act*. I advised the landlord about this during the hearing.

I also advised the landlord during the hearing that I was denying his request to amend his application to seek an order of possession on the basis of the new 10 Day Notice, as this notice

was not submitted into evidence by the landlord and the tenant had no notice that the landlord was seeking an order on the basis of this new notice. The landlord did not amend his Application prior to this hearing to indicate that he was seeking an order of possession on the basis of the new 10 Day Notice.

I advised the landlord at the hearing that he could reapply for an order of possession on the basis of a new notice to end tenancy or on the basis of the new 10 Day Notice he said was issued in April 2015, if the tenant has not paid the rent identified as owing in that notice, in full. I further advised the landlord about the importance of submitting documentary evidence to support his application, in accordance with the timelines specified in the RTB Rules of Procedure.

### Conclusion

I find that this current application is *res judicata*, meaning the matter has already been conclusively decided and cannot be decided again. I find that the March 9, 2015 decision of another arbitrator constitutes a bar to a subsequent claim for an Order of Possession based on the same 10 Day Notice, dated February 2, 2015. The landlord's application is dismissed without leave to reapply.

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: May 5, 2015

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Residential Tenancy Branch

