



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GURDEV HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OPR, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and damage to the rental unit; and, authorization to retain the security deposit. The landlord and one of the co-tenants appeared at the hearing.

### Preliminary Matters

The tenants sent their hearing package to the landlord via registered mail and the landlord confirmed receipt of the tenant's application. The landlord provided registered mail receipts, including tracking numbers, as proof the landlord's hearing documents were sent to each tenant via registered mail on November 3, 2015. The tenant appearing at the hearing confirmed that she received the landlord's hearing package. I was satisfied that the landlord sufficiently served both tenants with a hearing package and I continued with this hearing despite the absence of the male co-tenant.

The tenant requested the hearing be adjourned since the male co-tenant was working out of town and had not yet returned. A party to a dispute is expected to exercise due diligence and plan to attend the hearing scheduled to hear their dispute. Accordingly, I find it reasonable to expect that parties to a dispute make appropriate arrangements with their employer so that they can participate in the hearing, which was conducted over the telephone in this case. Considering the landlord submitted that rent has not been paid for several months; the applications filed by both parties were made several weeks ago; and, the hearing was conducted over the telephone, I found the tenant's failure to appear at the hearing was attributable to the tenant's lack of appropriate planning and that to grant the adjournment would be highly prejudicial to the landlord in this case. Therefore, I declined to grant the request for adjournment.

Issue(s) to be Decided

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?
3. Is the landlord entitled to a Monetary Order for the amounts claimed?

Background and Evidence

The tenancy commenced June 25, 2015 on a month to month basis. The tenants paid a security deposit of \$500.00 and were required to pay rent in the amount of \$1,000.00 on the first day of every month.

The landlord's agent personally served the female tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on October 16, 2015 indicating rent of \$1,600.00 was outstanding as of October 1, 2015 and a stated effective date of October 26, 2015 (the Notice). The tenants failed to dispute the Notice within five days of receiving the Notice. In their details of dispute, the tenants indicate the reason(s) for disputing the Notice is/are:

Income assistance messed up our rent cheque sent to old landlord not current so only partial rent was paid, hydro deposit also not sent leaving us with an unpaid balance and no hydro for over a week not due to our error

[reproduced as written]

The landlord responded to the tenants' position that rent was not paid due to a failing on part of Income Assistance by pointing out that Income Assistance had sent cheques to the landlord at the start of the tenancy. The landlord's ledger supports this contention as multiple cheques from Income Assistance, including cheque numbers, were recorded over the months of July 2015, August 2015 and September 2015. The landlord also provided a copy of one of the cheques made out to the landlord by Income Assistance.

The landlord also explained that for the first couple of months, the balance of the rent would be paid by the tenants in cash and that receipts were issued for the cash payments. I heard from the landlord that for the month of August 2015 the rent came in two installments: \$600.00 in cash on August 5, 2015 and \$400.00 from Income Assistance on August 24, 2015. For the month of September 2015 the only payment received was \$400.00 from Income Assistance leaving a balance owing of \$600.00. For the month of October 2015 no rent was received from the tenants or Income Assistance

which brought the balance of outstanding rent to \$1,600.00 when the 10 Day Notice was issued. The landlord submitted that no rent was paid after serving the tenants with the 10 Day Notice. The tenant confirmed that the \$1,600.00 was not paid after receiving the 10 Day Notice.

The landlord seeks to regain possession of the rental unit as soon as possible and a Monetary Order for the unpaid rent as well as loss of rent for the months of November 2015 and December 2015 since the tenants have continued to occupy the rental unit.

The tenant appearing at the hearing stated that she gave portion of the rent to her co-tenant and she was uncertain as to whether the co-tenant proceeded to pay any rent to the landlord. The landlord testified that the co-tenant did not.

In addition to unpaid rent, the landlord requested compensation for a broken window in the amount of \$262.50. The landlord indicated in its written submissions that the tenants had agreed to pay for the broken window in an email; however, the email was not in the landlord's evidence package before me. The tenant stated the window was broken at the start of the tenancy and that the landlord did not prepare a move-in inspection report. The landlord stated that there had been a move-in inspection report; however, I noted that it was not in the evidence package before me.

Documentary evidence provided for my consideration included: the tenancy agreement; the 10 Day Notice; a ledger showing payments received by the landlord with respect to this tenancy; a copy of an Income Assistance cheque made out to the landlord in the amount of \$400.00 on August 25, 2015; and, an invoice for replacement of a window.

### Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement unless the tenant has a legal basis for withholding rent.

Where a tenant does not pay the rent that is due the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to either 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 provided undisputed evidence that the tenants did not pay the outstanding rent of \$1,600.00 within five days of receiving the Notice.

The tenants did file to dispute the Notice within five days; however, where a tenant files to dispute the Notice the tenant must be prepared to present a legal basis for not paying rent or another reason under the Act for me to cancel the Notice. The Notice presented to me appears to be a valid Notice to End Tenancy in the approved form and I find the tenants did not present a legal basis for me to cancel the Notice. Rather, it would appear from the tenant's written submissions that the rent was not paid due to an inability to pay rent and a tenant's inability to pay rent is not a basis under the Act for withholding rent or failing to pay rent when due. Therefore, I dismiss the tenant's request to cancel the Notice and I uphold the Notice.

Having dismissed the tenant's application and having upheld the Notice I grant the landlord's request for an Order of Possession. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the evidence before me, I also find the landlord entitled to recover unpaid rent of \$1,600.00 from the tenants as well as loss of rent for the months of November and December 2015 since the tenants have continued to occupy the rental unit in these months.

Under section 37 of the Act, a tenant is required to leave a rental unit undamaged at the end of the tenancy. Since the tenants have yet to return possession of the rental unit to the landlord I provide the tenants the opportunity to rectify any damage they may have caused in the time they have left in the unit and I dismissed the landlord's request to recover the cost of broken window from the tenants with leave to reapply.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. I also award the landlord recovery of the filing fee paid for its application.

In light of all of the above, the landlord is provided a Monetary Order calculated as follows:

Unpaid Rent as of October 1, 2015

\$1,600.00

Loss of Rent: November 2015	1,000.00
Loss of Rent: December 2015	1,000.00
Filing fee	50.00
Less: security deposit	<u>(500.00)</u>
Monetary Order	\$3,150.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

### Conclusion

The tenant's application to cancel a 10 Day Notice to End Tenancy for Unpaid Rent issued on October 16, 2015 was dismissed.

The landlord's application for an Order of Possession was granted and an Order of Possession effective two (2) days after service was provided to the landlord with this decision to serve and enforce.

The landlord has been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of rent outstanding in the amount of \$3,150.00. The landlord's request for compensation for damage to the rental unit was dismissed with 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: December 17, 2015

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Residential Tenancy Branch

