



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA WOMENS RESOURCE SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes                      CNR

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on December 3, 2015. The Tenant filed seeking an order to cancel a 10 Day Notice to end tenancy for unpaid rent.

The hearing was conducted via teleconference and was attended by two agents for the Landlord, the Tenant, and the Tenant's Advocate. Each person gave affirmed testimony.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On December 29, 2015 the Tenant submitted 6 pages of evidence to the Residential Tenancy Branch (RTB). The Tenant affirmed that she served the Landlord with copies of the same documents that she had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's relevant submissions as evidence for these proceedings.

No documentary evidence was received on the RTB file from the Landlord.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

On a procedural note the Tenant and her Advocate called into the hearing from a public place using a cell phone which caused excessive background noise. The Tenant and Advocate's phone had to be placed on mute throughout the hearing in order to hear the Landlords' submissions. The Tenant and Advocate could hear everything that was being said while their phone was on mute. The Tenant and her Advocate's phone was taken off mute when it was their turn to present evidence.

Issue(s) to be Decided

1. Should the 10 Day Notice issued December 1, 2015 be upheld or cancelled?
2. If upheld, did the Landlord make an oral request for an Order of Possession?

Background and Evidence

The parties entered into a written month to month tenancy agreement that began on October 27, 2015. Rent of \$375.00 is payable on the first of each month and on October 27, 2015 the Tenant paid \$225.00 as the security deposit.

The Landlords testified that shortly after the Tenant moved into the rental unit they determined that she had not paid November 2015 rent of \$375.00. The Landlords submitted that the Tenant's Advocate has prevented them from discussing the situation with the Tenant.

The Landlords stated that each time they try and speak with the Tenant another application is filed for Dispute Resolution saying the Landlord is harassing the Tenant. They submitted that they attended a hearing last week; they had this hearing; and they have another one scheduled for next week. As a result, they have resorted to communicating with the Tenant in writing.

When November rent remained unpaid on December 1, 2015, they posted a 10 Day Notice to end tenancy to the Tenant's door. The Notice listed an effective date of December 12, 2015 for the \$375.00 unpaid rent that was due November 1, 2015.

The Landlords pointed to the Tenant's evidence which included copies of cheque history reports from the Ministry of Social Development and argued that the Tenant submitted evidence which showed that no rent was paid to them in November 2015.

The Landlords read through the statements pointing to the actual amounts paid to them (as displayed in bold text in the chart below). They submitted that they received three payments from the Tenant (1) \$225.00 for the security deposit; (2) \$375.00 for December 2015 rent; and (3) \$375.00 for January 2016 rent. They noted that the November 2015 statement indicated that the Tenant had been paid \$868.08 which appeared to them to have included money for her rent as the following months she was paid lower amounts, as noted below.

The following information was acquired from the cheque history statements submitted as evidence to the RTB and to the Landlords.

BENEFIT MONTH	PAYABLE TO	AMOUNT	
2015 NOV	M.M.B. - TENANT	\$868.08	
2015 NOV	P.O.	\$60.00	
<b>2015 NOV</b>	<b>A.W.R.S. – LANDLORD</b>	<b>\$225.00</b>	
////////////////////	////////////////////	////////////////////	
2015 DEC	M.M.B. – TENANT	\$528.08	
<b>2015 DEC</b>	<b>A.W.S.R.S. – LANDLORD</b>	<b>\$375.00</b>	
2015 DEC	P.O.	\$60.00	
////////////////////	////////////////////	////////////////////	
2015 JAN	M.M.B. – TENANT	\$493.08	
<b>2015 JAN</b>	<b>A.W.S.R.S. – LANDLORD</b>	<b>\$375.00</b>	
2015 JAN	P.O.	\$60.00	

The Advocate argued that the Tenant's November 2015 rent was paid to the Landlords on November 18, 2015. He later stated that the November rent was paid on November 22, 2015. I then asked the Advocate to point me to the statements they submitted into evidence to show where it showed that November 2015 rent was paid.

The Advocate responded to my aforementioned request by stating that the 10 Day Notice was defective and should be cancelled. Upon further clarification the Advocate stated that the Notice was issued December 1, 2015 after the November rent had already been paid; therefore, it should be cancelled. He then indicated that they did not have copies of the Tenant's evidence with them.

The Tenant was given an opportunity to present her testimony during which she stated that she had met with her social worker who told her that one of the Landlords' cheques remained uncashed. She said her social worker then told her that the cheque was still in their office and would be mailed to the Landlord. She stated she could not remember which month that cheque related to and did not know the cheque number.

In closing, the Landlords stated that they wanted to go ahead with the eviction notice. Upon further clarification the Landlords stated that they wished to obtain an Order of Possession.

### Analysis

Section 52 of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice; (b) give the address of the rental unit; (c) state the effective date of the notice; (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy; and (e) when given by a landlord, be in the approved form.

Section 88(g) of the *Act* provides that all documents, other than those referred to in section 89 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person may be given or served by attaching a copy to a door or other

conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord.

Notwithstanding the Advocate's submission that the Notice was defective; upon review of the 10 Day Notice to End Tenancy issued December 1, 2015, I find the Notice was valid and issued in accordance with section 52 of the *Act*. In addition, I find that the Notice was served upon the Tenant in a manner that complies with section 88 of the *Act*.

Section 26 of the *Act* stipulates, in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord. In this case rent was payable on or before the first of each month in the amount of \$375.00.

I favored the Landlords testimony over the Tenant's and Advocate's testimony. I favored the Landlords' submissions because their testimony was supported by the cheque history statements that clearly displayed the amounts paid to the Landlord and the benefit months they were paid for or attributed to.

After careful consideration of the foregoing, the documentary evidence, and on a balance of probabilities I find that the Tenant submitted insufficient evidence to prove that November 2015 rent of \$375.00 had been paid to the Landlords. Accordingly, I dismissed her application to cancel the Notice, without leave to reapply.

Section 55 of the *Act* provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

The Landlord appeared at the hearing and made a request that the 10 Day Notice be upheld and an Order of Possession be issued. Accordingly, I grant the Landlord's request for an Order of Possession, pursuant to section 55 of the *Act*.

### Conclusion

The Tenant's application has been dismissed, without leave to reapply.

The Landlords request for an Order of Possession has been granted and will be effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with Supreme Court and enforced as an Order of that Court.

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 07, 2016

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Residential Tenancy Branch

