



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FF

### 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;
- authorization to recover his/her/their/its filing fee for this application from the tenant pursuant to section 72.

The landlord attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord stated that the tenant was served with the notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on December 31, 2015 and has provided in their direct testimony the Customer Receipt Tracking number as confirmation. I accept the undisputed affirmed testimony of the landlord and find that the tenant was properly served as per sections 88 and 89 of the Act. The tenant is deemed to have received the package 5 days later after service as per section 90 of the Act.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlord's claim and my findings around it are set out below.

The landlord has not filed a copy of the signed tenancy agreement, but stated that the monthly rent was \$466.00.

The landlord stated that the tenant has been served with a 10 Day Notice to End Tenancy (the 10 Day Notice) dated December 10, 2015. The 10 Day Notice stated that the tenant failed to pay all of the rent of \$466.00 that was due on December 1, 2015. The 10 Day Notice also displays an effective end of tenancy date of December 27, 2015. The landlord stated that the tenant was served with the 10 Day Notice on December 10, 2015 by Canada Post Registered Mail on December 10, 2015. The landlord has submitted a copy of the Canada Post Registered Mail Customer Receipt Tracking Number Receipt as confirmation of service.

The landlord stated that the tenant has failed to update the ministry with the monthly rent of \$466.00 that was effective since June 1, 2014 as shown in the submitted letter dated November 28, 2014. The landlord clarified that the tenant's rent is paid directly by the ministry. The landlord stated that since June 1, 2014 the tenant has consistently been underpaying the rent by \$5.00. The landlord also stated that the underpaid amounts have been periodically paid leaving a current arrears balance of \$15.00 as of this hearing date.

The landlord stated that they continue to receive partial monthly rent payments directly from the ministry and the landlord continues to accept partially paid rent without issuing the tenant a notice for use and occupancy only.

The landlord seeks an order of possession for rent arrears and recovery of the filing fee.

### Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I find that the landlord has properly served the tenant with the 10 Day Notice dated December 10, 2015 and that the tenant has failed to pay all of the rent owed. However,

the landlord has continued to accept partial rent payments from the tenant for almost a 1 ½ year period without giving notice to the tenant of accepting the rent for use and occupancy only. The landlord has also failed to provide notice to the tenant that this behaviour of continued partial rent payments is no longer acceptable prior to issuing 10 Day Notice. In doing so, the landlord reinstated the tenancy by continuing to accept partial rent payments. Based upon the landlord's undisputed affirmed testimony, I find that the landlord has failed to establish a claim for an order of possession. The landlord's application is dismissed.

### Conclusion

The landlord's application is dismissed.

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 16, 2016

---

Residential Tenancy Branch

