



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding M'AKOLA HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNR

### Introduction

On 16 February 2023, the Applicant applied to the Residential Tenancy Branch [the 'RTB'] for Dispute Resolution, asking me for the following order against the Respondent.

- a) Cancellation of a 10-day notice to end tenancy [the 'Notice'], *per* s. 47 (4) of the *Residential Tenancy Act* [the 'Act'].

The Applicant appeared at the hearing on 17 March 2023. The Respondent also appeared.

### Preliminary Issues

The Respondent to this application was misnamed.

The Applicant submitted documents that indicated their landlord was actually a, 'body corporate', and not the individual named in the application:

1. The Applicant submitted a copy of the tenancy agreement, which was between the Applicant and a society.
2. The Notice also recorded the landlord as a society.

During the hearing, both parties agreed that the landlord is, in fact, a society. As a result, I amend the Applicant's application *per* s. 64 (3) (c) of the Act to show the landlord as the society named in both the tenancy agreement and the Notice.

I will now refer to the Respondent as the landlords, and the Applicant as the tenant.

### Issues to be Decided

Did the Notice comply with the Act?

If so, then did the Notice end the tenancy?

### Background and Evidence

Both parties confirmed that the copy of the tenancy agreement submitted by the tenant was accurate. It shows that the tenancy began in December 2017. It also records the rent as \$1,200.00 due on or before the first day of each calendar month. It further stipulates that the landlords will only accept rent payment *via* electronic funds transfer ['EFT'].

The landlords testified that the practice under this tenancy agreement was that the tenant would not pay rent directly to them. Rather, the landlords testified that they accepted rent payments on behalf of the tenant from 'B.C. Housing' and 'the Ministry'. By 'the Ministry' they meant the Ministry of Social Development and Poverty Reduction.

The landlords told me that each month the Ministry paid to them \$546.00 by EFT on behalf of the tenant, and that 'B.C. Housing' paid them the remainder of the rent. The landlords also said that they had been accepting payment of the tenant's rent from the Ministry since the beginning of the tenancy, that is, since December 2017. They did not testify to any dissatisfaction with this arrangement: it was apparent from their evidence that this arrangement had satisfied them for over four years now.

The landlords gave evidence regarding the Notice that they issued against the tenant. They confirmed that the copy of the Notice submitted by the tenant for this hearing was an accurate copy. The Notice was an RTB form. It was signed by an agent of the landlords, and dated 8 February 2023. It recorded the address of the tenant's rental unit, and a move-out date of 23 February 2023.

The Notice stated the grounds for ending the tenancy as a failure to pay rent. The landlords claimed in the Notice that the tenant had failed to pay \$546.00, which was due on 1 February 2023 ['February's Rent']. The landlords confirmed that this amount was that portion of the rent regularly paid by the Ministry on behalf of the tenant.

The landlords told me that they mailed the Notice *via* regular post on 8 February 2023, and that they included a cover letter with the Notice. The tenant submitted to me a copy of that cover letter, which the landlords agreed was accurate.

Contrary to the Notice, the cover letter asserts that the unpaid rent was actually, 'Outstanding November 2022 Rent'. The landlords then clarified in their testimony that they had, in fact, received February's Rent from the Ministry. Indeed, they submitted a document [the 'Statement'] showing a \$546.00-credit by EFT in the name of the tenant that they received from the Ministry on 1 February 2023.

When asked why their Notice claimed that the tenant had not paid February's Rent, the landlords gave the following evidence...

They said that in September of last year they issued upon the tenant a One-month Notice to End Tenancy [the '2022 Notice']. They felt confident that, having issued the 2022 Notice, the tenancy would end in October 2022. Because of this confidence, when on 22 October the Ministry paid them \$546.00 for the tenant's November rent ['November's Rent'], the landlords returned that money to the Ministry just six days later. There was no evidence that the landlords consulted with the tenant or the Ministry about their decision to return November's Rent.

But the tenant disputed the 2022 Notice. At the hearing of that dispute in February this year, the landlords and tenant settled their dispute; the RTB cancelled the 2022 Notice; and the tenancy continued.

At this hearing, the landlords testified that their accounting carries forward November's Rent (which they returned to the Ministry) as a debt owed by the tenant. This means that when the Ministry next paid rent on behalf of the tenant (*i.e.* when the Ministry paid the landlords \$546.00 for the tenant's December-2022 rent), the landlords considered that payment compensation for November's Rent, and not rent for December.

And so the landlords say the result of their accounting is that they did not receive rent for December 2022, and so on, with each subsequent payment by the Ministry merely covering the non-payment from the previous month.

This was their explanation as to why their Notice claimed that February's Rent was unpaid, while their Statement showed February's Rent as paid.

Indeed, the tenant testified that she has received a subsequent notice to end tenancy from the landlords, this one claiming a failure to pay rent for March – even though the landlords' Statement shows them receiving \$546.00 on 1 March from the Ministry on behalf of the tenant. The landlords did not contest this testimony.

### Analysis

#### *Did the Notice comply with the Act?*

The Notice did not comply with section 52 (d) of the Act. The Notice did not give accurate grounds for ending the tenancy: it claimed a failure to pay February's Rent as a ground, when, in light of the landlords' evidence at the hearing, it is apparent that their actual ground was a failure to pay November's Rent.

But I do not find this inaccuracy fatal to the Notice. Section 68 (1) (b) of the Act enables me to amend the Notice if it is reasonable in the circumstances to do so. Based on the landlords' evidence, I find it reasonable to amend the Notice to claim a failure to pay November's Rent as the ground to end the tenancy.

#### *Did the Notice end the tenancy?*

If the tenant failed to pay November's Rent, then this Notice would stand and end the tenancy.

The question then becomes, did the tenant pay November's Rent?

While the tenant did not directly pay November's Rent, the landlords have been content receiving rent from the Ministry every month on behalf of the tenant for over four years now. And the landlords' own evidence was that the Ministry paid November's Rent on behalf of the tenant.

What the landlords then did with November's Rent is not the concern of the tenant. Or, it should not be. It has, however, become the tenant's concern because of this Notice, which mischaracterised November's Rent as February's Rent. And it appears that the landlords intend to continue making it the tenant's concern, by issuing a similar notice

claiming that the tenant has not paid rent for March, when their own records show that to be false.

In order to eliminate potential confusion and avoid future notices based on November's Rent, I will strive for abundant clarity. Based on the evidence before me adduced at this hearing, I find that:

- a) November's Rent was paid on 22 October 2022; and
- b) February's Rent was paid on 1 February 2023.

### Conclusion

I grant the tenant's application to cancel this Notice.

I make this decision on authority delegated to me by the Director of the RTB *per* section 9.1(1) of the Act.

Dated: 17 March 2023

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Residential Tenancy Branch