



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes:** OPT

This application was brought by the landlord seeking an Order of Possession based on the tenant's written notice to vacate the unit effective February 28, 2011.

The landlord applicant appeared. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on June 3, 2009, the tenant did not appear.

### **Issue(s) to be Decided**

The landlord was seeking an Order of Possession and the issue to be determined based on the testimony and the evidence are:

- Whether or not the landlord is entitled to an Order of Possession based on the tenant's Notice to End Tenancy dated June 1, 2009?

### **Background and Evidence**

The landlord submitted into evidence a written information sheet showing the details of the tenancy and the application and proof of service. No other evidence was with the application. However the landlord testified that the evidence received should have also contained a copy of the tenant's written notice to vacate the rental unit. The landlord stated that this document was faxed into the Residential Tenancy Branch prior to the hearing and believed that there was either a malfunction of the fax machine or human error. The landlord offered to re-fax another copy of the tenant's notice. As the tenant was the author of the document, it was determined that re-faxing the tenant's notice would not unfairly prejudice the respondent and the landlord was permitted to do so. The landlord is seeking an order of possession based on the tenant's notice.

However, this missing evidence, if it had been received, was never located and no second copy was subsequently received by fax.

### **Analysis**

Section 45 of the Act states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) is not earlier than 1 month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance the landlord was basing the request for an order of possession on a written notice from the tenant to end tenancy under section 45 of the Act. In the absence of evidentiary verification, I am not able to determine whether or not the tenant gave a valid written notice to end this tenancy. Therefore it is not possible to find the tenant's missing notice to be enforceable under section 45 of the Act.

Based on the above facts I find I must deny the landlord's request to grant an Order of Possession under the Act and I dismiss the application.

### **Conclusion**

Based on the evidence and the testimony, I hereby dismiss this application 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: March 2011.

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Residential Tenancy Branch