



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, MNDC, MNSD

### Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give some oral evidence.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlords. Both files were heard together.

The tenant's application is a request for an order canceling the notice to end tenancy.

The landlord's application is a request for an order possession and a request for a monetary order for \$335.00. The landlord is also requesting recovery of the \$50 filing fee and requests an order to keep the full security deposit towards the claim.

First of all it is my decision that I will not deal with all the issues that the landlord has put on the application. For claims to be combined on an application they must related.

Not all the claims on the landlord's application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request for an order of possession and recovery of the filing fee, and I dismiss the remaining monetary claim with liberty to re-apply.

### Background and Evidence

On November 27, 2012 the landlord serve the tenant, by registered mail, with the notice to end tenancy for cause.

The tenant filed a dispute of the notice to end tenancy on December 17, 2012.

### Analysis

Section 90(a) of the Residential Tenancy Act states:

**90** A document given or served in accordance with section 88 *[how to give or serve documents generally]* or 89 *[special rules for certain documents]* is deemed to be received as follows:

(a) if given or served by mail, on the 5th day after it is mailed.

The reason items are deemed served is so that parties cannot avoid service by simply failing to claim or accept the registered mail.

In this case since the landlords have provided proof that the notice to end tenancy was mailed on November 27 by registered mail, it is deemed received on December 2, 2012.

Sections 47(4) & 47(5) of the Residential Tenancy Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution **within 10 days** after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is **conclusively** presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) **must vacate** the rental unit by that date.

Therefore in this case since the notice to end tenancy is deemed to have been received on December 2, 2012, the tenant had until December 12, 2012 to file dispute of the notice.

The tenant did not file a dispute of the notice to end tenancy until December 17, 2012, and therefore is five days outside the timeframe required.

Therefore since the tenants application is well outside the timeframe allowed I will not allow the request to cancel a notice to end tenancy, and this tenancy ends on January 31, 2013.

#### Conclusion

#### Tenant's application

The tenant's application is dismissed without leave to reapply.

#### Landlord's application

I've issued an order of possession for 1 PM on January 31, 2012, and I order recovery of the filing fee.

As stated above, the monetary portion of the landlords claim is 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: January 16, 2013

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Residential Tenancy Branch

