



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MT, CNC, FF, OPC

### Introduction

This hearing dealt with applications from both the landlords and the tenants under the *Residential Tenancy Act* (the *Act*). The landlords applied for:

- an Order of Possession for cause based on their 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 55;
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- more time to make an application to cancel the landlords' 1 Month Notice pursuant to section 66;
- cancellation of the landlords' 1 Month Notice pursuant to section 47; and
- authorization to recover their filing fee for this application from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss this matter with one another. The female tenant (the tenant) and later the male tenant joined the hearing after I had obtained some preliminary information from the landlord. When the tenant joined the hearing, I reviewed this information with the tenant to confirm its accuracy. The tenant confirmed that the male landlord (the landlord) left the 1 Month Notice in her mail slot on April 9, 2013. The tenant also confirmed that the landlord handed her a copy of the landlords' dispute resolution hearing package on May 3, 2013. I am satisfied that the above documents were served to the tenants in accordance with the *Act*.

As the Residential Tenancy Branch (the RTB) received the tenants' application to cancel the 1 Month Notice within 10 days of their being served with the 1 Month Notice, there was no need to consider the tenants' application for more time to file their application. The tenants' application for more time to file their application was unnecessary and I have not considered that portion of their application.

Issues(s) to be Decided

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are either of the parties entitled to recover their filing fees for this application from one another?

Background and Evidence

This one-year fixed term tenancy commenced on October 15, 2012. Monthly rent is set at \$950.00, payable in advance on the first of each month, plus heat and hydro. The landlords continue to hold the tenants' \$475.00 security deposit paid on October 17, 2012.

The landlords entered into written evidence a copy of the 1 Month Notice. Their notice identified April 30, 2013 as the effective date when the 1 Month Notice was to take effect. In accordance with the powers delegated to me under the *Act*, I have corrected the effective date to May 31, 2013. The landlord testified that page 2 of the 1 Month Notice provided to the tenants did not identify a specific reason to end this tenancy, but stated "See attached letters dated March 12, 2013 & April 9<sup>th</sup>, 2013."

The landlord also provided a copy of two May 1, 2013 receipts for \$950.00 and for a \$107.84 utility payment he had issued to the tenants for "use and occupancy only" and not to reinstate this tenancy.

Analysis

Section 52 of the *Act* requires a landlord to provide the following information on a notice to end tenancy form approved by the RTB:

**52** *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.*

In this case, there is undisputed sworn testimony and written evidence from the landlord that the landlords did not identify the reason to end the tenancy on the approved RTB

form. Although the landlords attached copies of previous letters to their 1 Month Notice, the landlords stroked through all of the reasons on the approved 1 Month Notice form. I find that the landlords have not complied with section 52(d) of the *Act*. As such, I find that their 1 Month Notice is invalid and has no effect. I allow the tenants' application to set aside the 1 Month Notice and dismiss the landlords' application for an Order of Possession based on the 1 Month Notice.

As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee from the landlords. I dismiss the landlords' application to recover their filing fee.

#### Conclusion

I allow the tenants' application to cancel this 1 Month Notice and dismiss the landlords' application for an Order of Possession based on the 1 Month Notice. This tenancy continues.

I order the tenants to recover their \$50.00 filing fee for their application by reducing their next monthly rent payment by \$50.00.

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: May 17, 2013

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Residential Tenancy Branch

