



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the landlord – OPE

For the tenant – CNC, O

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for an Order of Possession because employment with the tenants has ended. The tenant has applied to cancel the One Month Notice to End Tenancy and other issues.

One of the tenants and landlords attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the landlords entitled to an Order of Possession?
- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?

### Background and Evidence

The parties agree that this tenancy started for this unit in August, 1995; although the tenant moved into the building and rented a different unit in 1993. At present rent for this unit is \$400.00 per month plus \$20.00 a month for a parking space.

The landlords testify that the tenant was employed as a caretaker manager of the building and as such his rent was subsidized by around \$880.00 per month based on current market rents. This employment was ended in writing and the tenant was served a One Month Notice on October 23, 2013 in person. The reason given on this Notice is that the tenants' rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee. The Notice informs the tenants that they have 10 days to dispute the Notice or the tenancy would end on January 31, 2014.

The landlord testifies that the tenants negotiated this extended date for the Notice and was aware that they had to find new accommodation by January 31, 2013. However the tenant only disputed the Notice on January 07, 2014. The landlord testifies that they have continued to allow the tenants to pay \$400.00 a month in rent even though his employment has ended.

One of the landlords RW testifies that they want to give the unit to a new manager. The landlord VW testifies that he will manage the building and use the unit as the office. RW then testifies that they have not yet advertised for a new manager as they have to wait until the tenants move out.

The tenants seek to have the Notice cancelled. The tenant DH testifies that he did not dispute the Notice as the landlord extended the date the tenants had to move out. The tenant disagrees that the unit was part of the employment arrangement and testifies that they all ready lived in a unit in the building when he first started as a caretaker and only moved to this larger unit when they had their son. The tenant testifies that therefore the rental unit was not part of an employment arrangement with the landlord. The tenant accepts that his employment has ended with the landlord but this should not be linked to his rental unit as they are two separate things. The tenant agrees that his rent should increase to around \$600.00 per month now he is no longer undergoing caretaker duties.

The tenant refers to the first page of the One Month Notice and testifies that the landlords have spelt the tenants last name wrong and have omitted an address for

service the landlords. The tenant submits that the notice should therefore be deemed invalid.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In dealing with the question of whether or not a Notice to End Tenancy is invalid if the landlord does not provide their address for service on the Notice or makes an error in the spelling of the tenant's name. While it is preferable to provide these details s. 52 of the *Residential Tenancy Act (Act)* states:

**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.*

Furthermore page two of the Notice states that an error in this Notice does not make the Notice invalid. Consequently I must find that the One Month Notice issued on October 23 and served upon the tenants on that date is a valid Notice and remains in force and effect.

Therefore I find the tenants had 10 days from October 23, 2013 to file their application to dispute the One Month Notice. The tenant filed their application on January 07, 2014.

I refer the parties to s. 66(1) of the *Residential Tenancy Act* which states:

**Director's orders: changing time limits**, and provides in part as follows:

*66(1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59(3) [starting proceedings] or 81(4) [decision on application for review].*

The Residential Tenancy Policy Guideline # 36 speaks to "Extending a Time Period" and provides in part:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling.

It is not sufficient for a party to not pay attention to the correct procedure as outlined on page two of the Notice. Consequently, I find as the tenants have been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable 10 days after receiving the Notice to End Tenancy I must dismiss the tenants' application to set aside the One Month Notice to End Tenancy for cause.

On the basis of this, I uphold the One Month Notice to End Tenancy for cause and grant the landlord an Order of Possession effective on the date of the notice of January 31, 2014.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on **January 31, 2014**. This Order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.

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 29, 2014

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Residential Tenancy Branch

