



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF (Landlord's Application)  
                              CNC, MT (Tenants' Application)

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord and the Tenants. The Tenants made their Application on March 27, 2015 and the Landlord made his Application on March 31, 2015.

The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause (the "Notice"), and to recover the filing fee. The Tenants made their Application to cancel the Notice and requested more time to cancel the Notice.

The Tenants appeared for the hearing with a legal advocate and an assistant for the legal advocate; the Tenants provided affirmed testimony and their legal advocate made submissions during the hearing. The Landlord named on the Application appeared for the hearing and identified himself as the owner of the rental unit; in addition, the co-owner of the rental unit also appeared for the hearing with the property manager. All parties for the Landlord provided affirmed testimony during the hearing.

The parties confirmed receipt of each other's Applications at the start of the hearing which I determined had been served in accordance with Section 89(1) (c) of the *Residential Tenancy Act* (the "Act"). Both parties also provided a copy of the Notice into written evidence. The hearing process was explained to the parties and they had no questions about the proceedings. I have considered the evidence provided by the parties in this case but I have only documented the evidence which I relied upon to make my findings in this decision.

### Issue(s) to be Decided

- Have the Tenants justified the reasons for making their Application to dispute the Notice outside of the allowable time limits?

- If so, are the Tenants entitled to cancel the Notice?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agreed that the tenancy started on February 1, 2015 for a fixed term due to end on July 31, 2015. Rent under the written tenancy agreement is payable by the Tenants in the amount of \$717.00 on the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$350.00 on November 15, 2014.

The property manager testified that he had served the Tenants with the Notice dated February 25, 2015 by placing it in the outside seam of the rental unit door so that the Tenant would see it when the door was opened. This was done in the presence of a witness who signed a Proof of Service document verifying this method of service.

The reasons on the Notice for ending the tenancy were: the Tenant has significantly interfered with or unreasonably disturbed the Landlord; and there is a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after the Tenants had been given notice. The effective vacancy date on the Notice is March 31, 2015.

The Landlord confirmed that the Tenants are not in any rental arrears but that they had made an Application to end the tenancy on March 31, 2015 because the Tenants had not vacated the rental unit as detailed on the Notice.

The Tenants' legal advocate submitted that the Tenants had rectified and remedied the issues for which they had been served the Notice and no further action was required in this respect. However, the property manager disputed this and testified that the reasons detailed on the Notice were still continuing and that this is why they were seeking an Order of Possession.

When the Tenants were asked about their Application for more time to cancel the Notice, the Tenants started to provide testimony on the Notice. However, they later explained that they found the process confusing. The Tenants' legal advocate submitted that the Tenants were not aware of their rights and were overloaded with information. The Tenants testified they found the Notice on March 11, 2015 on the ground in the driveway. The Landlord disputed this submitting that if the Notice was on the floor then the Tenants must have opened the door for it to fall on the floor and would have seen it on the door.

### Analysis

On examination of the Notice, I find the contents on the approved form complied with the requirements of the Act. I find that the property manager served the Notice to the Tenants by placing it in the rental unit door seam which was a conspicuous place where it was clearly visible and likely to attract attention or notice. I find that this was corroborated by the Proof of service document provided into written evidence. Therefore, I accept service of the Notice to the Tenants pursuant to Section 88(g) of the Act.

Section 48(5) of the Act allows a tenant to dispute a Notice by making an Application within ten days of receiving the Notice. Furthermore, Section 48(6) of the Act states that if a tenant fails to make an Application within ten days, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and must vacate the rental unit by that date.

As a result, I turn my mind to the date the Tenant's received the Notice. Section 90(c) of the Act states that a document posted to the door is deemed to have been received three days later. Therefore, if the Notice was posted to the door on March 25, 2015 then it would be deemed to have been received by the Tenants on February 28, 2015. Therefore, the Tenants would have had until March 10, 2015 to dispute the Notice which they did not do. Even if I were to accept the Tenants' testimony that they did not discover the Notice until March 11, 2015, the Tenants still failed to apply to dispute the Notice within the 10 day time limit set by the Act as their Application was made on March 27, 2015.

However, Section 66 of the Act allows an Arbitrator to extend the above time limit established by the Act only in exceptional circumstances; these may include a medical emergency or a natural disaster. However, in this case, I find the Tenants have failed to meet the burden to prove that the time limit to dispute the Notice should be extended. A lack of knowledge of the Act or of a party's right to remedies under the Act is not sufficient reason for me to grant the Tenants more time. The Notice clearly indicated the time limits for applying to dispute the Notice and if the Tenants did not understand this information then they were at liberty to call the information line or consult and engage an advocate as they had done for this hearing.

Based on the foregoing, I find the Tenants failed to dispute the Notice within the time limits stipulated by the Act. Therefore, the Landlord is entitled to an Order of Possession which is effective for May 31, 2015 at 1:00 pm because the Tenants have paid rent for May 2015. This order must be served onto the Tenants and may then be filed and

enforced in the Supreme Court as an order of that Court. Copies of this order are attached to the Landlord's copy of this decision. The Tenants' Application is accordingly dismissed.

As the Landlord has been successful in this matter, the Landlord can recover the filing for the cost of making the Application from the Tenants' security deposit in the amount of \$50.00.

### Conclusion

The Landlord is issued with an Order of Possession to end the tenancy on May 31, 2015. The Landlord may recover the filing fee from the Tenants' security deposit. The Tenants' Application is dismissed without leave to re-apply.

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 11, 2015

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Residential Tenancy Branch

