



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Karyn Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, OPB, CNC, FF

This hearing dealt with two related applications. One was the landlords' application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause and the other was the tenant's application for an order setting aside the notice. The tenant's application was filed on February 2, 2016; the landlords' application was filed on February 16. Both parties appeared at the hearing.

The parties agreed that the tenancy would end on April 1, 2016 and that an order of possession effective **1:00 pm, April 2, 2016**, would be granted to the landlords.

The landlords had paid \$100.00 to file their application for dispute resolution and they were not prepared to waive their claim for reimbursement from the tenant for that amount. The landlords argued that by agreeing to the April 2 date they were giving the tenant two free days of rent. The tenant stated that her income is extremely low and payment of the \$100.00 would be a significant hardship for her.

On a hearing of a tenant's application for an order setting aside any notice to end tenancy the onus is on the landlord to prove, on a balance of probabilities, that the reason(s) given on the notice are valid. This can be done by submitting written evidence and providing oral testimony on the tenant's application. If the landlord successfully meets their onus of proof and the notice to end tenancy is upheld, or the tenant's application is dismissed for any other reason (such as the tenant fails to appear at the hearing), section 55(1) of the *Residential Tenancy Act* provides that the arbitrator must grant an order of possession of the rental unit to the landlord. In situations where the landlord also wants to claim for a monetary order in addition to an order of possession, the landlord must issue and serve their own application for dispute resolution. But, if the only relief requested by the landlord is an order of possession, a separate application for dispute resolution is not required.

Since the landlords' application was not necessary in order to obtain the relief they requested, I am denying their application for reimbursement of the filing fee from the tenant.

With regard to the landlords' claim regarding lost rent I point out that income lost is offset by the certainty and quick resolution provided by the settlement offered by the tenant.

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 28, 2016

Residential Tenancy Branch