



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC

This hearing was set to deal with an application by the tenants for an order setting aside a 2 Month Notice to End Tenancy for Landlord's Use and a monetary order. The landlord appeared at the hearing; the tenants did not.

An occupant of the rental unit had filed a written submission on behalf of the tenants with the Residential Tenancy Branch after the deadline for doing so had passed. The landlord stated that she had not been served with a copy of the submission.

I kept the hearing open for 25 minutes but the tenants did not appear. In the absence of an appearance by the applicants by 10:55 am, this application is dismissed.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed or the notice to end tenancy is upheld, the arbitrator must grant an order of possession of the rental unit to the landlord.

The landlord testified that the rent is due on the first day of the month and she served the 2 Month Notice to End Tenancy on March 1, 2016.

Section 49(2) of the *Residential Tenancy Act* provides that the effective date of a 2 Month Notice to End Tenancy for Landlord's Use must be:

- Not earlier than two months after the date the tenant receives the notice; and,
- The day before the day in the month that rent is payable under the tenancy agreement.

The result is that the effective date of a 2 Month Notice to End Tenancy for Landlord's Use served on March 1, 2016 is May 31, 2016. Any incorrect date on a notice to end tenancy is automatically corrected by section 53. Therefore, I grant the landlord an order of possession effective **1:00 pm, May 31, 2016**.

A tenant who has been served with a 2 Month Notice to End Tenancy for Landlord's Use does not have to pay the last month's rent. In this situation, the tenant must pay the April rent but not the May rent.

Although the landlord's evidence and the submission on behalf of the tenant both referred to a 1 Month Notice to End Tenancy for Cause the tenants had not included a request for an order setting aside that notice on this application for dispute resolution nor was there an application by the landlord for an order of possession based upon a 1 Month Notice to End Tenancy for Cause before me. This decision only applies to the 2 Month Notice to End Tenancy for Landlord's Use. If either party wishes to take any action with regard to a 1 Month Notice to End Tenancy for Cause they must file a separate Application for Dispute Resolution.

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: April 06, 2016

Residential Tenancy Branch