



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes CNL,

### Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancelling the two month Notice to End Tenancy for landlord use.
- b. A repair order.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord has not served a 2 month Notice to End Tenancy on the Tenant. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on September 13, 2016. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy?
- b. Whether the tenant is entitled a repair order?

### Background and Evidence:

On October 28, 2015 the parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on November 1, 2015 and end on October 31, 2016. The rent was \$1300 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$650 on October 28, 2015. The tenancy agreement contained a provision that provision that at the end of the fixed term lease "the tenancy ends and the tenant(s) must move out of the residential unit." It was initialed by the tenant. On September 8, 2016 the landlord wrote the tenant a letter

reminding him that they would not be renewing the lease when it ended on October 31, 2016 and that they had booked an inspection for October 21, 2016 at 1:00 p.m.

The tenant stated he has not found alternative accommodation and he continues to reside in the rental unit.

The relevant provisions of the Residential Tenancy Act provide as follows:

**Order of possession for the landlord**

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances **by making an application (my emphasis)** for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit at the end of the fixed term; (my emphasis)**
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

Analysis:

The landlord has not served a 2 month Notice to End Tenancy or any other Notice that complies with section 52 on the Tenant. As a result an arbitrator does not have the legal authority to grant an Order for Possession under section 51(1) when the tenant's application is dismissed.

The only authority to grant an Order for Possession in a situation such as this is under section 51(2). However, this requires an application by the landlord. The landlord has not filed an application.

In summary I determined there is no basis to grant an Order for Possession under section 51(1) of the Act as the landlord did not use an approved Notice. The landlord must file an Application for Dispute Resolution in order to obtain an Order for Possession under section 51(2). The landlord failed to file an Application for Dispute Resolution.

The representative of the landlord stated at the hearing that the landlord will be filing an Application for an Order for Possession and they will be asking to regain possession as quickly as possible.

I ordered that the dryer vent be repaired within 2 weeks from the date of this order.

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: November 07, 2016

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Residential Tenancy Branch