



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, DRI, FF

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed November 9, 2016 wherein the Tenant disputed a rent increase, sought an Order cancelling a 2 Month Notice to End Tenancy for Landlord's Use issued on September 13, 2016 (the "Notice"), and requested a Monetary Order to recover the filing fee.

The Tenants' application was set for hearing by telephone conference call at 1:30 p.m. on December 19, 2016. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the Respondent Landlord.

### Analysis and Conclusion

Rules 7.1 and 7.3 of the *Residential Tenancy Branch Rules of Procedure* provide as follows:

#### **Commencement of Hearing:**

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator.

#### **Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

As the Applicant Tenant did not attend the hearing by 1:42 p.m., and the Respondent Landlord appeared and was ready to proceed, I dismiss the Tenant's claim without leave to reapply.

The Landlord sought an Order of Possession pursuant to section 55(1) of the *Residential Tenancy Act*. Such an Order may be granted in the event a Tenant's

Application to cancel a Notice to End Tenancy is dismissed *and* the Notice complies with section 52 of the *Residential Tenancy Act*.

Upon careful review of the Notice, it is clear the Notice does not indicate an effective date and therefore it fails to comply with section 52.

Further, the Landlord indicates on the Notice that the Notice was served December 31, 2016; as that date has yet to occur, this is clearly in error.

While it is likely, based on the Landlord's submissions at the hearing that he intended to note the effective date of the Notice as December 31, 2016, and noting that section 53 allows me to correct effective dates, the simple fact is that the Notice failed to indicate any effective date; therefore I am unable to correct such a date.

Accordingly, and even though I have dismissed the Tenant's claim without leave to reapply, I am unable to grant an Order of Possession for the Landlord pursuant to section 55.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: December 20, 2016

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Residential Tenancy Branch