



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, FF

### Introduction

This hearing dealt with a landlord's Application for Dispute Resolution (the "Application") under the Residential Tenancy Act (the "Act") for:

- an order of possession for the landlord's use of the rental unit; and
- recovery of the filing fee paid for their application from the tenant.

Landlord V.R. appeared at the teleconference hearing along with her husband who is also a landlord, Landlord I.R., although he is not named on the application (collectively referred to as the "landlord"). Both Landlord V.R. and Landlord I.R. gave affirmed testimony. The tenant appeared at the teleconference hearing with her advocate. The tenant also gave affirmed testimony. During the hearing the landlord and the tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Issue(s) to be Decided

- Is the landlord entitled to an order of possession for the landlord's use of the rental unit?
- Is the landlord entitled to recover the filing fee paid for this application from the tenant?

### Background and Evidence

The undisputed testimony of Landlord I.R. and the tenant established that the tenancy started on August 1, 2014 when the tenant moved into the basement suite of the landlord's home. There is no written tenancy agreement.

Landlord I.R. testified that a Two Month Notice to End Tenancy For Landlord's Use of Property (the "Two Month Notice") was issued on December 1, 2016. Landlord I.R. testified that he served the tenant in person by handing her a copy of the Two Month Notice on December 1, 2016. The landlord testified that he handed the tenant a copy of the Two Month Notice at the door of her unit and that his wife was present at the time of service. The Two Month Notice required the tenant to move out by February 1, 2017. The landlord plans to have his son move into the tenant's unit.

The landlord submitted a copy of two other notices to end the tenancy that Landlord I.R. said were sent to the tenant before the Two Month Notice. These notices were typed written letters. One notice is signed and dated October 31, 2016 with a required move out date of November 1, 2016 ("Notice #1"). The other notice is signed and dated November 30, 2016 with a required move out date of December 1, 2016 ("Notice #2").

The tenant did not dispute the reason given by the landlord for wanting to end the tenancy. However, the tenant testified that she was never served with the Two Month Notice. The tenant testified that she saw the Two Month Notice for the first time when it was included in the landlord's evidence package. The tenant argued that Landlord I.R.'s testimony about having served the 10 Day Notice is a complete fabrication.

The tenant acknowledged that she received two typed written notices to vacate the unit but not the Two Month Notice. The tenant also testified that the copies of the two typed written notices that the landlord submitted are not the same copies that the tenant received. The tenant claimed that the landlord falsified evidence.

The tenant submitted copies of the two typed written notices that the tenant said she received from the landlord. Both copies of the tenant's notices were not signed. One notice had a date of September 27, 2016 with a required move out date of November 1, 2016. Tenant K.B.'s name was handwritten on the top of this notice ("Notice #1a"). The second notice was not dated and required the tenant to move out by December 1, 2016 ("Notice #2a"). The tenant testified that when she received these notices, she notified the landlord that the notices were not valid in accordance with the *Act*.

The tenant relied upon the falsification of documentary evidence as support for her position that Landlord I.R.'s testimony regarding service of the Two Month Notice should not be believed.

Landlord I.R. acknowledged that it was his handwriting on the tenant's copy of the Notice #1a dated September 27, 2016.

Landlord V.R. testified that one typed written notice was sent in September and the other in October 2016. Landlord V.R. did not give any testimony as to service of the Two Month Notice on the tenant.

Neither Landlord V.R. nor Landlord I.R. provided any explanation for the discrepancies between the notices submitted by the tenant and the copies submitted by the landlord.

The tenant, in her submissions, also challenged the validity of the Two Month Notice pointing to the fact that the tenant's name and address are blank. The tenant argued that the Two Month Notice does not meet the form and content requirements set out in section 52 of the *Act*.

### Analysis

Based upon the above testimony and documentary evidence, and on a balance of probabilities, I find as follows.

Section 55(2) of the *Act* sets out the circumstances under which a landlord may request an order of possession. Pursuant to section 55(2) (b) of the *Act*, the landlord is required to first give a copy of the notice to end the tenancy to the tenant. In giving the tenant a copy of the notice to end the tenancy, the landlord is required to use one of the service methods set out in s. 88 of the *Act*.

The evidence of the landlord is that a copy of the Two Month Notice was handed to the tenant on December 1, 2016. The tenant's evidence is that she never received a copy of the Two Month Notice. Based on the disputed testimony, I must address the issue of credibility in determining whether the landlord served the tenant with a copy of the Two Month Notice as required by the *Act*.

In determining the issue of credibility, I have taken into consideration the submissions of the tenant in regards to the landlord's two typed written notices that the landlord said were sent to the tenant prior to the Two Month Notice. The tenant argued that the copy of the notices that the landlord submitted were fabricated and the tenant submitted her copies as proof.

After comparing the typed written notices submitted by the parties, I accept the testimony of the tenant that the copies that she submitted were the actual notices sent by the landlord.

In making this finding I have taken into consideration the following:

- i) The signature dates on the copy of the notices that the landlord submitted would have only given the tenant one day notice to vacate. Notice #1, however, specifically refers to giving the tenant more than a month for their move. The tenant's copy showing a date of September 27, 2016 with an effective move out date of November 1, 2016 (Notice #1a), is more consistent with the timing stated in the notice giving the tenant more than a month's notice for their move;
- ii) Landlord V.R. testified that one of the notices was sent to the tenant in September. This is consistent with the date of September 27, 2016 that is shown on the tenant's copy (Notice #1a). The landlord could not have sent a notice in September that wasn't signed and dated until October 31, 2016;
- iii) Landlord I.R. acknowledged that it is his hand writing shown on the tenant's copy of the notice dated September 27, 2016 (Notice #1a). Of significance is that Landlord I.R.'s handwriting does not appear on the copy submitted by the landlord (Notice #1); and
- iv) Neither Landlord V.R. nor Landlord I.R. offered any explanation for the discrepancies between their copies of the two notices and the copies submitted by the tenant.

Based upon the foregoing, I find that the landlord falsified evidence of the two previous typed written notices to end the tenancy that the landlord testified were sent to the tenant.

Based upon the finding that the landlord falsified evidence, I accept the tenant's testimony where it differs from that of the landlord with respect to service of the Two Month Notice. Accordingly, I find that the landlord has insufficient evidence to prove that they provided the tenant with a copy of the Two Month Notice in accordance with the requirements of the *Act*. Therefore, I dismiss the landlord's application and the tenancy will continue.

As the landlord's application is dismissed due to lack of service of the Two Month Notice, I do not need to address the validity of the Two Month Notice which was challenged by the tenant.

Conclusion

The landlord's application is dismissed.

This decision is final and binding on the parties, unless 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: January 17, 2017

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Residential Tenancy Branch