



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, MNSD, FF

### Introduction

This hearing was convened to deal with cross-applications by the landlords and the tenant pursuant to the *Residential Tenancy Act* (the “Act”). The landlords’ application, dated December 2, 2016, is for an order of possession for cause pursuant to s. 55, authorization to retain the security deposit pursuant to s. 38, and authorization to recover the filing fee for this application pursuant to s. 72. The relief sought by the landlords is based on a 1 Month Notice to End Tenancy for Cause dated October 28, 2016, with an effective date of November 30, 2016 (the “1 Month Notice”).

The tenant’s application, dated November 25, 2016, disputes the 1 Month Notice and seeks recovery of the filing fee from the landlord.

One of the landlords attended the hearing on behalf of both. The tenant did not attend. The landlord was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

Although I accept that the landlords served the tenant with the Notice of Hearing and their application for dispute resolution along with their paginated evidence package, the landlords failed to signed the 1 Month Notice. It is not clear that the tenant served the landlords with the Notice of Hearing for her application, scheduled for the same date and time.

Included in the evidence package submitted by the landlords was a second 1 Month Notice to End Tenancy for Cause dated December 2, 2016, with an effective date of February 1, 2017, and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 3, 2016, with an effective date of December 13, 2016. The notices were not before me, as the landlords had not amended their application to include them.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for cause?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary order requested?

Is the landlord entitled to recover the filing fees for this application from the tenant?

Background and Evidence

Based on the copy of the tenancy agreement in evidence, this was a month to month tenancy which began May 1, 2016. The monthly rental amount is \$800.00 and due on the first of the month. A security deposit of \$400.00 was paid by the tenant at the start of the tenancy and is still held by the landlords.

As set out above, only the 1 Month Notice dated October 29, 2016 was before me. The landlords did not sign this notice. This was remarked upon by the tenant in an email to the landlords dated December 2, 2016 with respect to the 1 Month Notice, which was included in the evidence submitted by the landlords. In that email the tenant states as follows: "You have left me no choice but to fight this unfair eviction. I have been to a lawyer and have filed all the necessary paperwork to apply for a dispute resolution . . . There is a hearing set for January 6<sup>th</sup>. You should be receiving notice of this soon. The bogus eviction notice that you taped to my door was not even signed by you".

Analysis

The landlord testified that the 1 Month Notice was posted on the tenant's door. Her materials in evidence included photographs of this. The tenant's application to dispute the 1 Month Notice states that she received the 1 Month Notice on October 28, 2016. I accept that the tenant was served with the 1 Month Notice at issue on October 28, 2016.

Section 55 of the Act allows me to issue an order of possession upon application by the landlord or when the tenant's application to dispute a notice to end tenancy is dismissed. As the tenant's application to dispute the 1 Month Notice was not filed within

10 days of receipt, the 1 Month Notice would under most circumstances be upheld, and an order of possession would issue.

However, s. 55(1) requires that the landlord's notice to end comply with s. 52. Section 52 of the Act states as follows:

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

...

(e) when given by a landlord, be in the approved form.

[Emphasis added]

As set out above, the 1 Month Notice at issue was not signed by the landlords. It does not comply with s. 52 as required by s. 55(1), and it is not effective as required by s. 55(2). I am therefore unable to grant an order of possession.

As the landlord was not successful, I decline to order return of the filing fee.

### Conclusion

The landlord's application with respect to the 1 Month Notice dated October 28, 2016 is dismissed without leave to reapply. The 1 Month Notice dated October 28, 2016, which is unsigned, is not valid and the landlords may not reapply on the basis of that notice.

As the tenant did not attend the hearing, the tenant's application is dismissed without leave to reapply.

As set out above, the landlords have issued two other notices to end tenancy. This decision does not affect their ability to make separate applications based on one or both

of those notices. However, the landlords are required to resubmit their evidence in support of any other application brought on the basis of any other notice to end tenancy.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: January 16, 2017

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Residential Tenancy Branch