



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, OPR

### Introduction

This hearing dealt with cross applications. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent. The landlords applied for an Order of Possession for unpaid rent. The landlords appeared at the hearing but the tenant did not despite leaving the teleconference call open for nearly 30 minutes.

The landlords confirmed that they were served with the tenant's application and were prepared to deal with the matters identified on the tenant's application. Since the tenant failed to appear at the hearing I dismissed the tenant's application without leave.

The landlords had named two co-tenants in filing their application and sent their hearing packages to each of the named tenants via registered mail on January 13, 2017 at the rental unit address. The landlords provided copies of the registered mail receipts, including tracking numbers, as proof of service. The landlords had also submitted that they had received a notice from the female tenant on December 27, 2016 that she was moving out that day. Accordingly, the female tenant was likely not residing at the rental unit at the time the registered mail was sent to her. Section 89 of the Act provides that where a landlord sends an Application for Dispute Resolution to a tenant via registered mail the address used must be the tenant's address of residence or the tenant's forwarding address. I was unsatisfied that the female tenant was residing at the rental unit on January 13, 2017 and I informed the landlords that I was prepared to exclude the female tenant as a named party to the dispute. The landlords were agreeable to naming just the male tenant.

As for the registered mail sent to the male tenant, I heard that he was still residing in the rental unit as of January 13, 2017; however, the registered mail sent to him was not picked up by the tenant. Section 90 of the Act provides that a party is deemed to be served five days after mailing, even if the recipient refuses to accept or pick up their

mail. Accordingly, I find the tenant is deemed to be served with the landlord's application.

The landlords stated that based upon what they have heard from neighbours of the rental unit, it is possible the rental unit has been vacated or abandoned recently; however, the landlords have not yet confirmed that. The landlords requested an Order of Possession be provided to them in the event the unit has not yet been vacated or abandoned.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession?

### Background and Evidence

The tenancy started on October 1, 2016 and the tenants paid a security deposit of \$1,050.00. The tenants are required to pay rent of \$2,100.00 on the first day of every month for a fixed term of one year. The female tenant gave notice that she was moving out on December 27, 2016.

The landlords issued a 1 Month Notice to End Tenancy for Cause on December 31, 2016 and served it upon an adult person at the rental unit on January 1, 2017. Rent was not paid for January 2017. The landlords then posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on January 2, 2017.

The 10 Day Notice indicates that rent of \$210.00 was outstanding as of January 1, 2017 and has a stated effective date of January 12, 2017. The landlord explained that the \$210.00 printed on the 10 Day Notice was a typographical error and should have read \$2100.00. Regardless, the landlords confirmed that no amount of rent was collected for the month of January 2017 even after serving the 10 Day Notice.

The tenant filed to dispute both of the above described Notices to End Tenancy on January 6, 2017 and indicating that he received the Notice(s) on January 2, 2017; however, his application to cancel the Notices has been dismissed as described earlier in this decision. I also note that nowhere in the tenant's application does he indicate that rent was paid for January 2017.

Analysis

Section 55(1) of the Act provides 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.

In this case, the tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent and the 1 Month Notice to End Tenancy for Cause was dismissed, as explained in the Introduction section of this decision. The 10 Day Notice has an earlier effective date and I proceed to consider whether the landlords are entitled to an Order of possession based upon that Notice.

The 10 Day Notice submitted as evidence by both parties provides for the name of the tenant, the name of the landlord, the rental unit address, provides a reason for ending the tenancy, has an effective date and is signed and dated by the landlord. Accordingly, I find the 10 Day Notice meets the form and content requirements of the Act. Therefore, I find the criteria of section 55(1) have been met and I must provide the landlords with an Order of Possession.

Provided to the landlords with this decision is an Order of Possession effective two (2) days after service. However, should the rental unit already be vacated or abandoned, possession of the rental unit automatically reverts back to the landlords and enforcing the Order of Possession is not necessary.

Conclusion

The tenant's application has been dismissed.

The landlords' request for an Order of Possession has been granted and the landlords are provided an Order of Possession to serve and enforce upon the tenant in the event the rental unit has not already been vacated or abandoned. The Order of Possession is effective two (2) days after service.

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: February 01, 2017

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Residential Tenancy Branch