



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy that was given for cause, and recovery of the filing fee.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for cause.

The landlords testified that the tenants were served with notice of the hearing by registered mail that was mailed on May 21, 2017; however the tenants did not join the conference call that was set up for the hearing.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail are deemed served five days after mailing, and therefore, it is my finding that the tenants have been properly served with notice of the hearing. Further, it is obvious that the tenants were aware of today's hearing as they filed a cross application, and their hearing was scheduled for the same time.

The tenant's application has therefore been dismissed, and I conducted the hearing on the landlord's application, in the tenant's absence.

All testimony was taken under affirmation.

#### Issue(s) to be Decided

The issue is whether or not the landlords have established the right to an Order of Possession and recovery of their filing fee.

#### Background and Evidence

The landlords testified that this tenancy began on February 15, 2015 and the present monthly rent is \$1100.00, due on the first of each month.

The landlords further testified that the tenants have caused repeated disturbances at the rental property, and therefore on April 5, 2015, a one-month Notice to End Tenancy was posted on the tenants door.

The landlords further testified that the tenants failed to comply with that notice, and failed to apply for dispute resolution within the required 10 day time frame.

The landlords further testified that these ongoing disturbances are unreasonably disturbing the other occupants of the property and therefore they want this tenancy ended as soon as possible.

The landlord's noted that the end of tenancy date on the Notice to End Tenancy was May 31, 2017.

The landlords are therefore requesting an Order of Possession for as soon as possible and request recovery of their \$100.00 filing fee.

### Analysis

I accept the landlords undisputed, sworn, testimony that a one-month Notice to End Tenancy was posted on the tenants to our on April 5, 2017 and therefore, since the notice was posted on the door it is deemed served three days after posting, and the tenants had until April 18, 2017 to file for dispute resolution, however they failed to do so.

Sections 47(4) & 47(5) of the Residential Tenancy Act state:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

Though the tenants did file a dispute of the Notice to End Tenancy, it was not filed within the ten-day time frame required, and they did not appear at today's hearing to give any evidence to support their request to have the Notice to End Tenancy canceled.

It is my decision therefore that the tenants are conclusively presumed to have accepted that the tenancy ends, and therefore, pursuant to section 62 of the Residential Tenancy Act, I allow the landlords request for an Order of Possession, and for recovery of the filing fee.

As stated above, the tenant's application is dismissed without leave to reapply, pursuant to section 62 of the Residential Tenancy Act.

Conclusion

The tenant's application has been dismissed without leave to reapply.

I have issued an Order of Possession that is enforceable two days after service on the tenants.

I have issued a monetary order for the tenants to pay \$100.00 to the landlords for recovery of the filing fee.

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: June 05, 2017

---

Residential Tenancy Branch