



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NVISION PROPERTY MANAGEMENT LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause served on December 4, 2019 to be effective on January 31, 2020. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Preliminary Issue – Service of proceeding package

The tenants received a 1 Month Notice to End Tenancy for Cause on their door on December 4, 2019. The tenants filed their Application for Dispute Resolution on December 16, 2019 which is within 10 days of receiving the 1 Month Notice after taking into account the 10 day filing deadline fell on a weekend.

The Residential Tenancy Branch prepared the proceeding package on December 18, 2019 and provided it to the tenant via email with instruction to serve it upon the landlord by December 21, 2019. The tenant also telephoned the Residential Tenancy Branch on December 18, 2019 to make enquiries about the dispute resolution proceeding process and information concerning late payment of rent.

The tenant did not serve the proceeding package by December 21, 2019. Rather, the tenant delivered a portion of the proceeding package to an office affiliated with the landlord on January 6, 2020. The landlord's agent contacted the Residential Tenancy Branch on January 8, 2020 and stated that the landlord had not received the entire proceeding package. The landlord was informed that it was the tenants' obligation to serve the full proceeding package to the landlord. Nevertheless, the landlord sent evidence to the tenants for this proceeding via registered mail and the registered mail

was delivered on January 9, 2020. The tenants delivered the remainder of the proceeding package to the landlord's office on February 7, 2020.

I asked the tenant to provide a reason for failing to deliver the proceeding package to the landlord as required. The tenant indicated he understood there was a certain amount of time to serve documents but that he did not understand the proceeding package had to be delivered by December 21, 2019 and they spent time gathering evidence before serving the proceeding package to the landlord.

Section 59 provides that an Application for Dispute Resolution must be served upon the other party within three days of making the Application for Dispute Resolution. Rule 3.1 of the Rules of Procedure further requires that the applicant must serve additional documents to the respondent with the Application for Dispute Resolution, including the Notice of Dispute Resolution Proceeding, and all of these documents together are referred to as "the proceeding package". Since the proceeding package was prepared and sent to the tenant on December 18, 2019, he was required to serve the complete proceeding package to the landlord no later than December 21, 2019. This information is provided in the email and Fact Sheet provided to the tenant on December 18, 2019. The tenants failed to sufficiently serve the landlord with the proceeding package despite the written instructions given to the tenant. Rather, it was accomplished much later on January 6, 2020, in part, and another part on February 7, 2020.

I informed the parties that I may dismiss the tenant's application based on the failure to serve the landlord with notification of the dispute as required. The landlord requested the tenant's application be dismissed but that an Order of Possession be provided to the landlord as the landlord was of the position the tenants were delaying the eviction proceeding; however, the landlord's agent also indicated he was prepared to proceed if necessary.

The tenants were prepared to proceed to demonstrate they had not unreasonably disturbed other occupants, which was one of the stated reasons indicated on the 1 Month Notice to End Tenancy, but conceded they had paid rent late on several occasions, which was the other stated reason for ending the tenancy on the 1 Month Notice.

I declined to hear this case further as the tenants failed to serve their dispute resolution proceeding package as required and I was of the view the 1 Month Notice was in the approved form, duly completed and there was basis to end the tenancy for repeated late payment rent. As such, I dismissed the tenant's application. I have not given the

tenants leave to reapply since the time limit for disputing the 1 Month Notice has long since lapsed. I proceed to consider the landlord's request for an Order of Possession under section 55(1) of the Act.

#### Procedural Matter – name of landlord

The tenants identified two landlords in filing their Application for Dispute Resolution. I have amended the style of cause to reflect the name of the landlord as reflected on the 1 Month Notice.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

#### Background and Evidence

The landlord posted a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") on the tenants' door on December 4, 2019. The tenants received the 1 Month Notice the same day and filed to dispute the 1 Month Notice; however, for reasons provided above, I have dismissed their application to dispute it.

A copy of the 1 Month Notice was provided to me and I note that it is in the approved form, it is duly completed, including reasons for ending the tenancy, and it is signed and dated by the landlord's agent.

During the hearing, the landlord's agent stated the landlord is willing to permit the tenants occupancy of the rental unit until March 31, 2020 provided the tenants pay the full amount of rent for March 2020 on or before March 1, 2020. The tenants indicated they would appreciate the extra time to vacate the rental unit and they would be paying rent for March 2020 and vacating the unit by March 31, 2020.

#### Analysis

Section 55(1) of the Act provides that an Order of Possession shall be provided to a landlord in certain circumstances. Section 55(1) provides as follows:

**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, I have dismissed the tenants' application to cancel the 1 Month Notice. Upon review of the 1 Month Notice provided to me, I am satisfied that it meets the form and content requirements of section 52 of the Act. Accordingly, I find the criteria of section 55(1) have been met and the landlord is entitled to an Order of Possession.

In recognition of the party's willingness to end the tenancy effective March 31, 2020, I provide the landlord with an Order of Possession with an effective date of March 31, 2020.

Considering the landlord's willingness to permit occupancy until March 31, 2020 was conditional upon receiving rent from the tenant for March 2020, I also provide the landlord with a conditional Order of Possession with this decision effective two (2) days after service upon the tenants. This conditional Order of Possession may only be served upon the tenants **if** the tenants fail to pay the full amount of rent due for March 2020 on or before March 1, 2020.

### Conclusion

The tenants' application to cancel the 1 Month Notice is dismissed. The landlord is entitled to an Order of Possession under section 55(1) of the Act.

The landlord is provided an Order of Possession effective March 31, 2020 that may be served upon the tenants at any time.

The landlord is also provided a conditional Order of Possession effective two (2) days after service that may only be served upon the tenants if the tenants fail to pay the full amount of rent due for March 2020 on or before March 1, 2020.

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 21, 2020

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Residential Tenancy Branch