



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nina Santoro and Fred Santoro  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNL, OLC

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49; and
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation (the Regulation) and/or tenancy agreement, pursuant to section 62.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an application for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

### Preliminary Issue- Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to the application for an order for the landlord to comply with the Act to warrant that they be heard together.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss the application for an order for the landlord to comply with leave to reapply.

### Issues to be Decided

Is the tenant entitled to an order for cancellation of the Notice?

If not, are the landlords entitled to an order of possession based on the Notice?

### Background and Evidence

While I have turned my mind to all the evidence provided by the parties, including documentary evidence and the testimony, not all details of the submission and arguments are reproduced here. I explained Rule of Procedure 7.4 to the attending parties; it is their obligation to present the evidence to substantiate their claims.

Both parties agreed the tenancy started on June 01, 2019. Rent is \$560.00 per month, due on the first of the month. At the outset of the tenancy a security deposit of \$275.00 was collected and the landlords hold it in trust.

Both parties also agreed the landlord served the Notice in person to the tenant on October 29, 2020 and the tenant continues to occupy the rental unit. The tenant's application was submitted on November 12, 2020.

A copy of the Notice was provided. The Notice is dated October 29, 2020 and the effective date is December 31, 2020. It states: "The rental unit will be occupied by the landlord or the landlord's spouse."

Both parties agreed the Notice is not signed.

### Analysis

Based on both parties undisputed testimony, I find the tenant was served the Notice in person on October 29, 2020, in accordance with section 88(1) of the Act.

Section 52 of the Act states:

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,

I have reviewed all the evidence and I find that the Notice is not signed. I find that this omission invalidated the Notice as the landlords did not comply with section 52(a) of the Act.

Accordingly, the Notice is cancelled and of no force of effect.

### Conclusion

The Notice dated October 29, 2020 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

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 08, 2021

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Residential Tenancy Branch