



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPU FF

### Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on October 12, 2017. The landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order of possession based off a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice); and,
- to recover the filing fee from the tenant for the cost of this application.

One of the Tenants, K.R., attended the hearing. The Landlord was represented at the hearing by legal counsel. Both parties provided affirmed testimony. The Tenant confirmed receipt of the Landlord's application, Notice of Hearing, and evidence. No issue with service of these documents was identified. The Tenant confirmed that they did not provide any documentary evidence as part of this proceeding, and were wishing to rely on oral testimony.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

Counsel for the Landlord was present, and confirmed, via testimony and documentary evidence, that the property owner and original Landlord, P.R., passed away on May 7, 2021, and that her estate is being managed by the executor of the estate, C.K., named

on this application as the Landlord. Given this, I hereby amend the Landlord's name on this application to reflect the naming convention laid out in Policy Guideline #43, section D, which includes reference to the original owner and the current executor. This amended name will be reflected on the style of cause, but this amendment will not impact the issues on this application.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?

Background, Evidence and Analysis

The Landlord sent the Notice to the Tenants by international courier mail on September 6, 2021, from Australia to Canada. Tracking information was provided, and shows that the package was delivered to the Tenants' address for service on October 6, 2021. Although the Tenant asserts they did not receive the Notice until October 26, 2021, I find there is sufficient evidence to demonstrate otherwise, and that it is more likely than not that the package was sufficiently served and delivered on October 6, 2021, the day it was noted to be delivered, as per the tracking information.

The Notice was issued due to unpaid rent in the amount of \$6,250.00, which was due on September 5, 2021. A copy of the Notice was provided into evidence.

Section 52 of the Act provides for the form and content of notices to end tenancy. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord.

More specifically, Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In this case, after reviewing the Notice, I note it is not signed by the Landlord, and I find it does not satisfy the basic requirements set out under section 52. I do not find a typed name under the "name" field is sufficient in this case, as the adjacent signature field was left blank. I find the Notice does not comply with section 52 of the Act. I hereby cancel the Notice, dated September 6, 2021, as it does not comply with the form and content requirements.

Accordingly, the tenancy continues at this time and until such time it legally ends.

It is important to note that I have made no findings as to whether the landlord has a basis under the Act for ending the tenancy. The landlord remains at liberty to re-issue a Notice to End Tenancy should the landlord decide to pursue eviction.

As the Landlord was unsuccessful with the application, I decline to award the recovery of the filing fee.

### Conclusion

The Notice issued on September 6, 2021 has been cancelled and the tenancy continues at this time.

I have made no finding as to whether there were sufficient grounds for eviction and the landlord is at liberty to re-issue a notice to end tenancy if the landlord so chooses.

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: December 09, 2021

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Residential Tenancy Branch