



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction and Procedural Matters

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act ("Act"). The landlord applied for an order of possession for the rental unit pursuant to a 1 Month Notice to End Tenancy for Cause ("Notice") and for recovery of the filing fee paid for this application.

The landlord, the landlord's agent, and the tenant attended and the hearing process was explained.

At the outset of the hearing, the matter of the lack of evidence from both parties was discussed, as the only evidence in the hearing file was a photograph sent by the landlord said to be of the rental unit. A copy of the Notice was not included with or attached to the landlord's application, filed on August 21, 2015.

The landlord's agent submitted that she had sent in a copy of the Notice to the Residential Tenancy Branch ("RTB") with evidence when she sent the tenant a copy of the landlord's application and evidence, contending that the registered mail was sent on October 13, 2015.

Further, the landlord had no clear explanation as to the reason they did not serve the tenant with the landlord's application within 3 days of making the application, as required by section 59(3) of the Act.

It is noted that the landlord, in their application, referred to another dispute resolution application before the RTB, which caused me to locate that resultant Decision. The hearing on the tenant's application seeking cancellation of a 1 Month Notice to End Tenancy for Cause, among other things, was held on August 18, 2015. The other Arbitrator severed the unrelated claims of the tenant and dealt only with the Notice.

The other Arbitrator, in a Decision of August 18, 2015, dismissed the tenant's application seeking cancellation of the Notice, as neither the tenant nor the landlord provided a copy of the Notice into evidence and as neither party could answer specific questions at the hearing about the Notice. The other Arbitrator also informed both parties that the application and hearing package contained specific instructions as to service of evidence.

Additionally, the other Arbitrator did not grant the landlord an order of possession for the rental unit, as the landlord was unable to provide details of the Notice.

*Preliminary matter*-It is noted that after the conclusion of the hearing and prior to making this Decision, the undersigned received a package of evidence from the landlord, which shows that it was received by the RTB on October 16, 2015, and package of evidence from the tenant, which shows that it was received by the RTB on October 15, 2015.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit?

#### Background and Evidence

Included in some of the testimony provided, the landlord asserted that the dispute address was not a rental unit and that no tenancy existed.

In response to my question as to the lack of evidence filed with their application, the landlord's agent stated that no one at the "rentalsman" told her to do so.

The tenant submitted that he in fact has a written tenancy agreement, has been paying rent since the tenancy began in 2014, and that the rental unit is a studio apartment, as listed on a written tenancy agreement. The tenant did not mention that he had provided evidence for this hearing.

The tenant submitted additionally that he has a hearing on his application for dispute resolution set for November 19, 2015 on other matters.

#### Analysis

Section 2.5 of the Dispute Resolution Rules of Procedure ("Rules") requires that at the same time an application is submitted to the RTB, the applicant must submit with that

application a copy of the Notice to End Tenancy if the applicant requests an order of possession for the rental unit.

In this case, the landlord failed to include or attach with their application a copy of the Notice of which they want enforced, thereby failing to comply with the Rules. The landlord and the tenant were both made aware of the necessity of evidence at the prior hearing on August 18, 2015, and both parties again received their instruction package with the landlord's application, which includes instructions for filing of evidence and other procedural information.

As the landlord confirmed that they did not include or attach a copy of the 1 Month Notice with their application as required, I dismiss the landlord's application, with leave to reapply.

Although I have dismissed the landlord's application based upon their failure to comply with section 2.5 of the Rules, I would still make the same decision to dismiss the landlord's application, with leave to reapply, even had their evidence been before me at the hearing. The evidence package was received by the RTB on October 16, 2015, and section 3.14 of the Rules requires that any evidence the applicant intends to rely upon must be received by the RTB and the applicant not less than 14 days before the hearing, here, October 22, 2015.

### Conclusion

The landlord's application is dismissed, with leave to reapply.

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: October 23, 2015

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Residential Tenancy Branch

