



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FF

### Introduction

This hearing dealt with a landlords' application for an Order of Possession for cause. The tenants did not appear at the hearing. The landlord testified that each of the tenants were served with the hearing documents via registered mail sent to the rental unit on July 12, 2012. The landlord verbally provided two registered mail tracking numbers as proof of service and testified that the registered mail has not been returned. The landlord also testified that as of July 11, 2012, the date of a previous dispute resolution hearing, the tenants were still residing at the rental unit. I was satisfied the tenants have been served with the hearing documents in a manner that complies with the Act and I proceeded to hear from the landlords without the tenants present.

### Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for cause?

### Background and Evidence

The month-to-month tenancy commenced January 1, 2012 and the tenants are required to pay rent on the 1<sup>st</sup> day of every month. The tenants never paid the security deposit.

The landlords provided undisputed evidence that on June 26, 2012 the landlords had a third party personally serve the female tenant with a 1 Month Notice to End Tenancy for Cause (the Notice) with a stated effective date of August 1, 2012. The landlords have an email from the person that served the Notice confirming service occurred on June 26, 2012.

I noted that the Notice presented as evidence was dated June 30, 2012. The landlord explained that the Notice was erroneously dated June 30, 2012 so as to give the tenants until August 1, 2012 to vacate but affirmed that the Notice was prepared, signed, and served on June 26, 2012. The landlords also pointed to the previous dispute resolution hearing decision where the Notice was raised as an issue during the hearing.

The tenants did not file to dispute the Notice and the landlords believe the tenants are still in possession of the rental unit as of the date of this hearing.

The landlords are seeking recovery of the filing fee paid for this application as the tenants have been difficult to deal with and non-compliant with previous requests of the landlords.

### Analysis

Where a tenant receives a 1 Month Notice to End Tenancy for Cause, the tenant has 10 days to file an Application for Dispute Resolution to dispute the Notice. If the tenant does not file to dispute the Notice then, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

Based upon the undisputed evidence before me, I accept that the tenants were served with the 1 Month Notice as declared by the landlords and as reflected in the previous dispute resolution decision. Since the tenants have not filed to dispute the Notice I find the tenants conclusively presumed to have accepted that the tenancy shall end.

I note that the effective date on the Notice does not comply with the section 47(2) of the Act as the effective date must be:

- (a) not earlier than one month after the date the notice is received,  
and
- (b) the day before the day in the month, or in the other period on  
which the tenancy is based, that rent is payable under the tenancy  
agreement.

Since rent is due on the 1<sup>st</sup> day of the month, and the landlords gave the tenants a longer period of time to vacate than required, then pursuant to section 53(3)(b) of the Act the effective date is automatically changed to read August 31, 2012.

Based upon the foregoing, I find the tenancy shall end August 31, 2012 and I grant the landlords' request for an Order of Possession. An Order of Possession effective at 1:00 p.m. on August 31, 2012 has been provided to the landlords with this decision to serve upon the tenants.

I award the filing fee to the landlords and provide the landlords with a Monetary Order in the amount of \$50.00 to serve upon the tenants and enforce as necessary.

Conclusion

The landlords have been provided an Order of Possession effective at 1:00 p.m. on August 31, 2012. The landlords have been provided a Monetary Order in the amount of \$50.00 to serve upon the tenants.

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: August 01, 2012.

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Residential Tenancy Branch