



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ET, OPC

### Introduction

This hearing was scheduled to hear a landlord's application for an early end of tenancy and Order of Possession under section 56 of the Act. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

I was presented undisputed evidence by both parties that the tenant received both pages of a 1 Month Notice to End Tenancy on July 4, 2013 with a stated effective date of August 31, 2013 and the tenant did not file an Application for Dispute Resolution to dispute the 1 Month Notice.

The landlord explained that the landlord filed this Application on September 3, 2013 because the tenant failed to vacate the rental unit on the effective date of August 31, 2013, as stated on the 1 Month Notice.

As the tenancy ended August 31, 2013 pursuant to the undisputed 1 Month Notice, as explained in the analysis section of this decision, I found it was not necessary to further consider whether the tenancy should end early under section 56 of the Act. I am satisfied the tenant has been sufficiently notified by way of this Application that the landlord is seeking an Order of Possession and since the tenant has received a 1 Month Notice I amended this Application to include the dispute code related to requesting an Order of Possession for cause.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The tenancy for this rental unit commenced in May 2013 and the tenant is required to pay rent of \$375.00 on the 1<sup>st</sup> day of every month. The tenant's rent is paid to the landlord directly by the Ministry.

It was undisputed that on July 4, 2013 the tenant received both pages of a 1 Month Notice to End Tenancy for Cause with a stated effective date of August 31, 2013 (the Notice). The Notice was not provided to me as documentary evidence; however, the tenant confirmed the content of the Notice during the hearing. The tenant did not at any time file an Application for Dispute Resolution to dispute the Notice.

I heard that the Notice was issued due to an incident that took place on May 12, 2013. The tenant wished to make submissions to deny the landlord's allegations regarding the May 12, 2013 incident. I found the events of May 12, 2013 largely irrelevant as the time to dispute the 1 Month Notice has long since passed and the tenant did not file an Application to dispute the Notice. Accordingly, I did not permit the tenant to continue to make submissions regarding the events of May 12, 2013 despite his desire to do so.

The tenant did not instruct the Ministry to stop the rent payment for September 2013 and it was sent to the landlord. The landlord cashed the payment for September 2013 and explained that the landlord intends to refund rent for the days in September 2013 after the tenant vacates.

The tenant indicated that he has made some preparations to pack his belongings in preparation of moving but explained that he has difficulty finding new accommodation as he has an elderly dog.

As the hearing neared an end, I gave the parties my decision orally. The tenant proceeded to become agitated and argumentative and when the tenant failed to follow my instructions to cease I terminated the hearing.

### Analysis

A tenant that receives a 1 Month Notice to End Tenancy for Cause has 10 days to file an Application for Dispute Resolution to dispute the Notice. Section 47(5) of the Act provides that where a tenant does not file to dispute a 1 Month Notice within 10 days of receiving the Notice the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date and the tenant vacate the rental unit by that date.

Upon hearing from both parties, I accept that both pages of a 1 Month Notice were served upon the tenant on July 4, 2013. Since the tenant did not file to dispute the Notice the tenancy came to an end on the stated effective date of August 31, 2013 and the tenant was obligated to vacate the rental unit no later than August 31, 2013. Since the tenant continues to reside in the rental unit and the tenancy has ended, pursuant to section 55 of the Act, I find the landlord entitled to an Order of Possession.

As the tenancy ended August 31, 2013 I find the landlord's request for an early end of tenancy under section 56 to be a moot issue and I have not considered it further.

I am satisfied the landlord did not communicate or otherwise indicate waiver or withdrawal of the 1 Month Notice in depositing the rent payment for September 30, 2013. However, taking into consideration the landlord has collected rent for the month of September 2013 and the tenant's greater difficulty in finding alternative accommodation with an elderly dog I provide the landlord with an Order of Possession that is effective September 30, 2013.

### Conclusion

The landlord has been provided an Order of Possession with an effective date of September 30, 2013.

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: September 10, 2013

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Residential Tenancy Branch

