



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, O

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for cause and other issues.

The landlord and an advocate for the tenant attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The hearing package was sent by registered mail on September 04, 2013 but was returned uncollected by the tenant. The landlord amended the application and this was sent to the tenant on September 11, 2013. The tenant's advocate states that he collected this on behalf of the tenant. The original package containing the landlord's evidence is considered to have been served five days after it was sent pursuant to s. 90(a) of the *Residential Tenancy Act (Act)*. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The landlord testifies that this tenancy started around 2003 or 2004. The tenant is the landlord's brother and the parents of the landlord and tenant owned this home. The tenant has a motor home parked on the driveway of the home and the tenant cared for his parents.

Later the parties' father passed away. The parties' mother became the beneficiary of the will and the property passed to her. In 2011 the parties mother went into a care home and due to failing health the landlord held Power of Attorney for her mother's affairs. Proof of this has been provided in evidence along with the parties' father's will. Rent has been paid for this unit of \$375.00 which is paid for by the tenants disability assistance and is marked for rent.

The landlord testifies that it has come to her knowledge that a letter was sent to her parents in April 2007 from the city after a neighbour made complaints about some sheds and motor homes on the property. This letter ordered the parties parents to remove the motor homes from the property. However, as the parties' father was very ill at the time an extension was made on this Order until April, 2008. The landlord testifies that the motor home is still in place at the property and after speaking to someone at the city the landlord was informed that the original Order still stands. A City inspector went to speak to the tenant but later told the landlord that the tenant only spoke about family matters.

The landlord testifies that their mother's home was to be sold but due to the condition of the property it was decided it should be rented instead. The tenant sleeps in his motor home but has sole use of the other home for kitchen and bathroom facilities. The tenant agreed to move his motor home but when a tenant was found for the other home the tenant then rescinded this and said the new tenants will have to allow the tenant to share the bathroom facilities with him as he will not move the motor home despite the landlords requests and despite the Order from the City made in 2007.

The landlord testifies that a One Month Notice to End Tenancy was served upon the tenant in person on August 21, 2013. This Notice has an effective date of September 21, 2013 and states that the rental unit must be vacated to comply with a government Order. The landlord seeks to have the tenant vacate their parents' home and move his motor home from the property by October 31, 2013.

The landlord calls a witness who is the other brother of the parties. This witness testifies that he had communication with the tenant in August, 2013 about leaving the property. The tenant said he would be moving out and just needed an extra day. Later the tenant asked

the witness to act as a mediator between the parties as the tenant did not want to move out. The tenant wanted the landlord and the witness to pay \$200.0 each into their mother's bank account and the tenant would also pay \$200.00 in and this would cover the mortgage payments. The other \$175.00 would go towards his utilities from his disability cheque. The tenant also suggested that the new renters could let him live there still and share the house and pay less rent. The witness testifies that this was not acceptable to anyone other than the tenant and the tenant. The witness testifies that they never agreed to pay \$200.00 a month into their mother bank account and all their mothers money was used up in paying for the care home.

The tenant's advocate testifies on behalf of the tenant. The tenant's advocate testifies that he is also a family member and the tenant has stated that this is not a tenancy. The tenant's advocate discusses family affairs which have no bearing on this hearing. The tenant's advocate states that the tenant's father purchased this motor home for the tenant as the tenant's father wanted the tenant to live there as the tenant is on mental disability assistance. The tenant's advocate testifies that the tenant does sleep in the motor home but was seen many times eating in his parents' home. The money paid from Disability was for rent, board or mortgage. The tenant's advocate goes on to mention that the tenant maintains that this payment is forwards the mortgage and he wanted his siblings to contribute \$200.00 each so when the house was sold they would all get a one third share as specified in their fathers will.

The landlord testifies that when their father purchased the motor home it was put into the tenant's name. However the tenant's rent is for the use of the yard, home and garage.

The hearing closed at 12.45 p.m. Just as the landlord dialled out of the call the tenant dialled into the hearing. I explained to the tenant that the hearing had taken place as scheduled and the tenants advocate had given evidence on behalf of the tenant. The tenant testifies that due to his health he had written the conference call number down incorrectly and was unable to get into the conference call. I explained to the tenant that as the hearing had concluded I could no longer take evidence from the tenant.

## Analysis

In this analysis I will first deal with the issue of jurisdiction to determine if a tenancy has been created. The *Residential Tenancy Act* requires a landlord to have a written tenancy agreement in place. However, when rent has exchanged hands for a unit then a tenancy is presumed to have been created. The tenant's advocate argues that this is a family matter and the amount paid each month by the tenant was towards mortgage payments. However the money is sent from the tenant's disability Assistance and the evidence provided by the landlord clearly shows that this amount of \$375.00 is paid as rent for the tenant. I must therefore consider that the tenant is paying rent to use this property for the motor home, the garage and the use of the family home for bathroom and kitchen facilities. Consequently, I find the landlord has established that a tenancy exists and therefore is governed by the *Act*.

The next matter to address is which *Act* this tenancy falls under. In normal circumstances this would fall under the *Manufactured Home Park Tenancy Act* as the tenant resides in his own trailer and rents a site. However, as the tenant also uses the main home then I have to consider that this would also fall under the *Residential Tenancy Act*. Consequently I will deal with this matter under the *Residential Tenancy Act (Act)*.

The landlord has provided a notice from the city dated April, 2007 which Orders the owners to remove the motor home from the property as it is in contravention of the zoning bylaws. This Order was extended for a further 12 months until April 2008. However, I have little evidence from the landlord to show that this Order still remains in affect five years later.

However, when a tenant is served with a One Month Notice to End Tenancy under the *Act* the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenants on August 21, 2013. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47(5) of the *Act*. The Notice indicates an effective date of September 21, 2013 however this date has been amended as the landlord must provide one clear months Notice. The date of that Notice has therefore been amended to September 30, 2013 pursuant to s. 53 of the *Act*. As this date has since passed the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on October 31, 2013. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 21, 2013

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Residential Tenancy Branch

