



# 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 scheduled to hear a landlord's application for an Order of Possession for cause. 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.

The tenant acknowledged that he had not served his evidence package upon the landlord. Therefore, it was excluded and I considered the tenant's verbal testimony only.

### Issue(s) to be Decided

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

### Background and Evidence

The tenancy commenced April 15, 2013 and the tenant paid a \$100.00 security deposit. The tenant rents a room and has shared access to other common areas. The landlord does not reside at the property. The tenant is required to pay rent of \$450.00 on the 1<sup>st</sup> day of every month.

The landlord testified that she personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the Notice) in the evening of December 5, 2013 with a witness present. The landlord testified that the tenant took the Notice and said "you don't know what you're doing" and began stomping around.

The landlord included a copy of the subject Notice in her evidence package. The Notice has a stated effective date of "January 31, 2013" which should have read January 31, 2014.

The tenant denied receiving the Notice on December 5, 2013 or any other date except when he received it in the landlord's evidence package sent to him via registered mail on December 23, 2013.

I called the landlord's witness to testify and I provided the tenant an opportunity to question the witness. The witness testified that the landlord showed him the Notice before it was served to the tenant. The witness testified that he stood behind the landlord as she served the tenant with the Notice on December 5, 2013. The witness could not recall specific words the tenant used but stated that the tenant did not want to accept the Notice.

The tenant essentially claimed that the landlord and other tenants were lying and conspiring against him. The tenant described himself as an ideal tenant since he pays his rent and is quiet but he also admitted that he has punched two holes in the ceiling of his room when people upstairs make too much noise.

The tenant indicated that he wants to end the tenancy at the end of February 2014 since he has paid rent for February 2014 and he needs time to find alternative accommodation.

The landlord explained that she reluctantly accepted rent for February 2014 since the hearing was scheduled to take place in February 2014 but that she communicated to the tenant that he needed to move out as soon as possible. The landlord stated that she and the other tenants have concerns about their safety, sleep deprivation due to the tenant's behaviour, frequent police visits to the property, and further damage being caused to the property. Thus, the landlord was agreeable to refunding rent to the tenant when he vacates. The landlord requested an Order of Possession effective as soon as possible.

### 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. 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 that the tenancy will end on the effective date of the Notice and the tenant will vacate the rental unit by that date.

In this case, the tenant denied that he was served with the 1 Month Notice as alleged by the landlord. When service of a document comes into question, the person that served the document bears the burden to prove it was served. Accordingly, I must determine

whether the landlord has met her burden to prove the tenant was served with the Notice.

In weighing the different versions of events I was presented, I find I prefer the landlord's version of events over that of the tenants. I found the landlord's testimony highly credible and to be supported by testimony of a witness. In contrast, I found the tenant lacked credibility in alleging everybody was lying or conspiring against him; and, especially when he described himself as an ideal tenant despite admitting to punching holes in the ceiling. Therefore, I find the landlord has satisfied me that she served the tenant with the 1 Month Notice on December 5, 2013.

Although the effective date on the 1 Month Notice is stated incorrectly, an incorrect effective date does not invalidate the Notice. Rather, as section 53 of the Act provides, the effective date is automatically changed to comply with the requirements of the Act. Therefore, the effective date is changed to read January 31, 2014.

Since the tenant did not file to dispute the 1 Month Notice that was served upon him, I find the tenancy ended January 31, 2014. Therefore, I find the landlord entitled to an Order of Possession.

I also accept the landlord has legitimate concerns about the health and safety of the other occupants of the building and potential for further property damage. Therefore, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenant.

Since the tenant has paid for use and occupancy for the month of February 2014 I order the landlord to refund to the tenant any monies, calculated on a per diem basis, which the tenant paid for days after the date the landlord regains vacant possession of the rental unit. The refund is to be made on the day the tenant vacates the rental unit. Should the landlord refund cash to the tenant the tenant must provide a receipt for the payment.

### Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord must refund to the tenant any monies he paid for days after vacant possession of the unit is provided to her.

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: February 05, 2014

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Residential Tenancy Branch

