



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNR, CNR, RR, FF

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Tenant and the Landlord. The Tenant applied to cancel a notice to end tenancy for unpaid rent or utilities and to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The Landlord applied for an Order of Possession based on a notice to end tenancy for Landlord’s use of property and for a Monetary Order for unpaid rent. The Landlord also applied to recover the filing fee for the cost of making his Application.

The Landlord appeared for the hearing with the building manager both of whom provided affirmed testimony during the hearing. The Tenant appeared late for the hearing, at which point the details of the testimony provided by the Landlord and the building manager were revisited and the hearing commenced during which the Tenant also provided affirmed testimony.

The Landlord testified that the Application was served to the Tenant by posting the documents to the Tenant’s door which the Tenant confirmed receipt of. The Tenant confirmed that he had served the building manager, who is not named on the application, with his Application by posting the hearing documents to the building manager’s door. In relation to the service of the hearing documents as required by section 89 of the Act, I make the following findings.

With respect to the Landlord’s application for an Order of Possession, I find that the Landlord served the Tenant in accordance with section 89(2)(d) of the Act. With regard to the Landlord’s Application for a Monetary Order for unpaid rent, section 89(1) of the Act does not allow an applicant to serve the respondent with the Application by posting these documents to the door. As this method of service is not acceptable under Section 89(1) of the Act when making any monetary claim, I dismiss the monetary portion for unpaid rent of the Landlord’s Application with leave to reapply.

In relation to the Tenant's Application, again, section 89(1) of the Act does not allow a party to serve the Application by posting it to the door, unless it is a Landlord's Application for an Order of Possession which can be served by posting it to the door under section 89(2) of the Act. As a result, I dismiss the Tenant's Application with leave to re-apply.

The Landlord and Tenant had both provided a copy of the tenancy agreement relating to the tenancy and the notices to end tenancy prior to the hearing.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession based on the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice")?

#### Background and Evidence

The Landlord testified that this tenancy began on March 1, 2013 on a month to month basis. A written tenancy agreement was completed which established rent at \$1,850.00, payable by the Tenant on the first day of each month. The Tenant paid a \$925.00 security deposit at the start of the tenancy which the landlord still retains.

The landlord testified that the Tenant had been personally served with a 2 Month Notice to End Tenancy for Landlord's Use of the Property on December 27, 2013. The Notice was provided as evidence and shows that the tenancy is being ended because the Landlord intends to repair the rental suite and requires it to be vacant; the Notice has an effective date of February 28, 2014. The Notice shows that portion of the reason for ending the tenancy on page 2, namely the requirement for the Landlord to have building permits and approvals by law, was crossed out by the Landlord.

The Landlord explained that the Tenant is making preparations to leave the tenancy but they are still seeking an Order of Possession for the effective date of this Notice.

The Tenant testified that the Landlords had crossed out the requirements for the building permits and approvals because they don't have any as he had checked this with the city. However, when the Tenant was questioned as to why he had not disputed the Notice for these reasons he stated that he thought he was disputing the Notice in this hearing.

The Tenant continued to express his frustration as to the flooding problems he had with the rental suite and stated that the Landlord's were using the loopholes in the Legislation to get what they wanted.

### Analysis

I have examined the Notice and I find that the content and the manner in which it was served to the Tenant by the Landlord complied with the Act.

The Tenant testified that the Landlord had not got the appropriate approvals and permits required by law to renovate the building and this was the reason why it was crossed out on the second page of the Notice. However, I find that the same second page of the Notice also explains to the Tenant that he had 15 days to dispute the Notice and that a failure to do so means that the tenancy will end on the effective date of the Notice and the tenant must move out. The Notice also explains that the Landlord can apply for an Order of Possession which the Landlord has done in this case.

As a result, I find the Tenant failed to dispute the Notice which was a remedy afforded to him by the Act under section 49(8), which he failed to exercise. I do not accept the Notice was invalidated because the requirement for the Landlord to have building permits and approvals was crossed out. I find that the Notice gave sufficient information to the Tenant to enable him to exercise his rights under the Act.

Section 49(9) of the Act further provides that if a Tenant does not make an Application within 15 days after receiving the Notice, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, being February 28, 2014, and the Tenant must move out by this date.

The Tenant claims that he made an Application to dispute the Notice but his Application was to cancel a notice to end tenancy for unpaid rent and not the Notice for landlord's use of property.

As a result, I find that the Landlord is entitled to an Order of Possession which is effective for February 28, 2014 at 1:00 pm.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord **effective February 28, 2014 at 1:00 p.m.** This order is final and binding on the parties and may be enforced in the Supreme Court as an order of that court.

I also award the Landlord \$50.00 for the cost of making this application. The Landlord may recover this cost from the Tenant by deducting \$50.00 from the Tenant's security deposit pursuant to Section 72(1)(b) of the Act.

The remainder of the Landlord's Application is dismissed with leave to re-apply.

The Tenant's Application is dismissed with leave to re-apply.

Both parties are therefore at liberty to make a claim for monetary compensation for issues associated with this tenancy.

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 27, 2014

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Residential Tenancy Branch

