



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ABARDEEN FINANCIAL GROUP INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** ET, FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession without Notice. However, the landlord's agent explained that the tenant was no longer living in the unit and other people had moved in and were residing in the unit without paying rent. The landlord testified that they received a written notice on February 10, 2014 from the tenant's estate informing the landlord that the tenant would be ending the tenancy and vacating the unit as of March 31, 2014.

Accordingly, the landlord's application is amended to indicate that the landlord seeks an Order of Possession based on the tenant's written Notice to End Tenancy.

The applicant landlord and agent appeared. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, as confirmed by the Canada Post tracking number as being sent on March 10, 2014, the tenant or an agent of the tenant failed to appear.

### **Preliminary Matter**

The landlord requested that the landlord's application be amended to include the monetary claim for rental arrears, in addition to the request for an order of possession.

While an application for an Order of Possession is brought forth under section 55 of the Act, an application for monetary compensation is covered by section 67 of the Act and constitutes a different claim from that seeking an order of possession.

Rule 2.5 of the *Residential Tenancy Rules of Procedure* does permit amending an application but imposes the following criteria:

- The applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. If applications have not been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and serve the amended application.
- If the application has been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding.
- The application will not be amended where it would result in prejudice to the other party. If the amendment is allowed, the arbitrator may adjourn the hearing to allow the respondent time to respond to the amended application.

I find that the only way that the application could be amended to add a monetary claim, would be to adjourn the proceedings. I find that allowing the amendment during the hearing would be a violation of the rules of procedure. Moreover, a unilateral amendment would be contrary to the principle of natural justice being that it would prejudice the respondent who had no notice of the monetary claim.

Given the above, I find I am not able to hear, nor consider, any monetary claims by the landlord during these proceedings, with the exception of the landlord's request for reimbursement of the \$50.00 fee paid by the landlord for this application, which was specified on the landlord's application.

However, the landlord is at liberty to make a subsequent application seeking monetary compensation for damages and loss against the tenant, pursuant to section 67 of the Residential Tenancy Act.

### **Issue(s) to be Decided**

- Is the landlord entitled to an Order of Possession based on the tenant's February 3, 2014 Notice to End Tenancy effective March 31, 2014?

### **Background and Evidence**

The landlord submitted into evidence a copy of the tenant's written notice to vacate effective march 31, 2014, copies of other communications, a copy of a 10-Day Notice to End Tenancy for Unpaid Rent and a copy of the tenancy agreement.

The landlord is seeking an order of possession based on the tenant's notice.

### **Analysis**

Based on the evidence and the testimony of the landlord, I find that the tenant agreed in writing to vacate the unit and turn over possession to the landlord effective March 31, 2014. I find the tenant's notice valid and enforceable under section 45 of the Act.

Based on the above facts I find that the landlord is entitled to an Order of Possession under the Act.

### **Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective two days after the order is served on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed the \$50.00 fee paid for filing this application and I hereby grant the landlord a monetary order under section 72 for \$50.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) 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: April 24, 2014

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Residential Tenancy Branch

