



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord's Application: OPR, MNR

Tenant's Application: AAT, AS, CNC, CNL, FF, MT, OPT

### **Introduction**

This hearing dealt with Cross Applications filed by the parties.

The Application for Dispute Resolution of the Landlord requested the following orders:

1. an Order of Possession based on unpaid rent; and
2. a Monetary Order for unpaid rent.

The Tenant, T.A., made an Application for Dispute Resolution for the following Orders:

1. to allow her access to the unit;
2. to allow her to assign or sublet the unit;
3. to cancel the Notice To End Tenancy for cause;
4. to Cancel the Notice To End Tenancy for the Landlord's use of the rental property;
5. to recover the filing fee;
6. to allow the tenant more time to make an application to cancel a Notice to End Tenancy; and
7. to Obtain an Order of Possession of the rental unit.

Only the Landlord appeared at the hearing. Accordingly, the entirety of T.A.'s Application for Dispute Resolution is dismissed without leave to apply.

The Landlord gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he personally served T.A. with the Notice of Hearing and the Landlord's Application for Dispute Resolution on July 27, 2014 at 6:35 p.m. He testified that his wife witnessed service. I find T.A. was duly served.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

As T.A.'s application has been dismissed, the only issues to be decided are as follows:

1. Is the Landlord entitled to an Order of Possession?
2. Is the Landlord entitled to monetary relief?

### Background and Evidence

Based on the evidence filed and the testimony of the Landlord, the relevant facts relating to the tenancy are as follows:

1. The Landlord entered into a written Residential Tenancy Agreement with the T.A. and a Male Tenant, R. W. which was signed by the Landlord on August 5, 2013 and T.A. and R.W. on August 7, 2013.
2. The tenancy was for a fixed term of 6 months.
3. R.W. was incarcerated during the tenancy and requested that the tenancy be extended to allow T.A. to reside in the rental unit for longer than 6 months. The Landlord agreed to the continuation of the tenancy.
4. Rent was payable in the amount of \$1,300.00 on the first of the month.
5. A security deposit of \$650.00 was paid on August 5, 2013.
6. The Landlord informed the Tenants in June of 2014 that he had sold the home in which the rental unit was located. The closing date is September 4, 2014.

7. The Landlord did not serve the Tenants a two month Notice to End Tenancy for Landlord's Use of Rental Unit pursuant to section 49(5).

Based on the testimony of the Landlord, I find that T.A. was personally served at the rental unit with a 10 day Notice to End Tenancy for non-payment of rent on July 24, 2014 by (the "Notice"). The Notice informed the Tenants that \$434.00 was owing as of July 1, 2014. I find both T.A. and R.W. were served pursuant to section 88 of the Act.

The Notice informed the Tenants that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Tenants did not pay rent within five days of service, nor did they apply to dispute the Notice.

The Landlord personally served T.A. with the Landlord's Application for Dispute Resolution and the Notice of Hearing; the Landlord did not serve R.W.

In any event, on August 14, 2014, both T.A. and R.W. as well as the Landlord signed a Mutual Agreement to End a Tenancy effective August 31, 2014.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlord named T.A.'s adult son, L.A. as a party to this action, the tenancy agreement is between the Landlord, T.A. and R.W. and therefore L.A. is not named in this matter.

As the Landlord, T.A. and R.W. have mutually agreed to end the tenancy, I find, pursuant to section 55(2)(d), that the Landlord is entitled to an order of possession effective **at 6:00 p.m. on August 31, 2014**, the date and time agreed to by the parties. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord only served T.A. with the Landlord's Application for Dispute Resolution. Accordingly, any monetary claim can only be made against T.A.

The Notice and Landlord's Application for Dispute Resolution indicate the Landlord sought a Monetary Order in the amount of \$434.00. Neither Tenant disputed this amount.

At the hearing, the Landlord also requested an order for the rent payable for the month of August 2014 in the amount of \$1,300.00. Notably, pursuant to the Mutual Agreement to End a Tenancy and the Order of Possession granted, the Tenants will be in occupation until August 31, 2014.

The Landlord testified that he had sold the property in which the rental unit is located. Accordingly, I find the Landlord should have, pursuant to sections 49 and 51, provided the Tenants with two months notice and an amount that is equivalent to one month's rent in compensation.

Based on the foregoing, I decline to make an order that the Tenants pay \$1,300.00 for the month of August. I find that the Landlord has established a total monetary claim of \$434.00, representing the amount owing as of July 1, 2014, payable by T.A.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The Landlord is granted an Order of Possession, effective August 31, 2014, pursuant to a Mutual Agreement to End Tenancy, and is granted a Monetary Order for the sum of \$434.00 for July rent.

The Tenants are not required to pay rent for August 2014 as they are entitled to one month of compensation due to the sale of the rental unit.

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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*.

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: August 21, 2014

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Residential Tenancy Branch

