



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony, and provided evidentiary material prior to the commencement of the hearing. However, despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents on February 17, 2015 by leaving them in a conspicuous place in the rental unit, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participant who joined the call was the landlord.

The landlord testified that the documents were served on that date. The parties both reside in the rental unit, and the documents were left at the entrance of the living room. The *Residential Tenancy Act* specifies that:

89 (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

- (a) by leaving a copy with the tenant;
- (b) by sending a copy by registered mail to the address at which the tenant resides;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

I accept the affirmed testimony of the landlord that the documents were left in a conspicuous place within the rental unit, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?

Background and Evidence

The landlord testified that the rental unit is in a home that the landlord rents from a landlord company, and sub-rents the room to the tenant. The tenancy began as a 6-month fixed term tenancy on December 1, 2014 and the tenant still resides in the rental unit. A written tenancy agreement has been provided, however it does not specify the term. Rent in the amount of \$600.00 per month plus utilities is payable on the 1<sup>st</sup> day of each month and there are no rental arrears, however utilities are outstanding. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$300.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the tenant was served on January 26, 2015 with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. The notice is dated January 26, 2015 and contains an expected date of vacancy of February 28, 2015. The landlord testified that the notice was placed on a desk in the rental unit on that date, and the parties had a conversation. They discussed loud music played by the tenant and other noises, and the tenant had the notice in his hand but gave it back to the landlord saying that the tenant was going to find a new place to live. The landlord kept the notice for 3 days and then put it on the fridge in the rental unit with a magnet to ensure the tenant could see it. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord testified that the tenant works different hours than the landlord and disturbs the landlord and neighbours with noise when the tenant is home. The illegal activity relates to the disturbances.

The tenant has not served the landlord with an Application for Dispute Resolution disputing the notice but told the landlord that he had. The landlord has not been served and checked with the Residential Tenancy Branch who advised that no applications had been filed by the tenant.

The landlord seeks an Order of Possession.

Analysis

The *Residential Tenancy Act* specifies that a tenant must dispute a 1 Month Notice to End Tenancy for Cause within 10 days of service or deemed service. If the tenant fails to file the dispute within that time, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no less than 1 month after it is served and must end the tenancy the day before the day in the month that rent is payable.

In this case, the landlord testified that the notice was served by placing it in a conspicuous place within the rental unit on January 26, 2015. I accept that testimony, and find that the notice was deemed served 3 days later, or January 29, 2015. The tenant did not dispute the notice and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy.

I have reviewed the notice and find it is in the approved form and contains information required by the *Act*. The effective date of vacancy has passed and the tenant has not moved out of the rental unit. In the circumstances, I find that the landlord is entitled under the *Act* to an Order of Possession on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00.

These orders are final and binding and may be enforced.

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: March 11, 2015

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Residential Tenancy Branch

