



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            OPC, OPB, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for cause and breach of an agreement. The landlord also applied for monetary compensation for damage to the rental unit; unpaid rent; damage or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit. The tenant did not appear at the hearing.

The landlord's agent testified that the hearing package was sent to the tenant via registered mail at the rental unit address on May 13, 2015. After mailing the hearing package the landlord also emailed the tenant to advise him the eviction process had commenced and there were documents mailed to him. The landlord also informed the tenant's adult son who resides at the rental unit of this. The registered mail was returned as unclaimed. The landlord submitted that at times the tenant has communicated to the landlord that he lives at the rental unit with his children and other times that he does not, by way of email messages. I noted that in an email dated March 1, 2015 the tenant writes that he has resided at the rental unit with two of his children since the beginning of the tenancy. An email dated March 17, 2015 written by the tenant's adult son also states that his father, the tenant, occupies the rental unit. Also included in the landlord's evidence was an email from the tenant dated September 4, 2014 showing the tenant ordered cheques with a shipping address as that of the rental unit. I heard from the landlord that the tenant has not provided any other service address to the landlord and that lately the tenant has been evasive and stopped responding to the landlord's attempts to communicate.

Section 89(1) and (2) of the Act provides that an Application for Dispute Resolution may be served upon a tenant by way of registered mail sent to the address at which the tenant resides at the time of mailing or the tenant's forwarding address. Section 71 of the Act also provides me the authority to deem a party sufficiently served even if the party was not served in a manner that complies with section 89 of the Act.

Based upon the evidence before me, and considering that a tenant may have more than one residence, I was satisfied that the landlord served the tenant with the hearing package at an address at which the tenant resides.

Section 90 of the Act deems a person to have received mail five days after the date of mailing so that a person cannot avoid service by refusing to accept or pick up their mail. Therefore, I

find the tenant is deemed to have received the hearing package as of May 18, 2015 and I continued to hear from the landlord without the tenant present.

During the hearing the landlord requested that his monetary claim be withdrawn with liberty to reapply. I amended the application accordingly and the landlord is given leave to reapply for a Monetary Order as appropriate.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

#### Background and Evidence

The two-year fixed term tenancy commenced September 1, 2014. The tenant paid a security deposit of \$725.00 and a pet damage deposit of \$250.00. The tenant is required to pay rent of \$1,450.00 on the 1<sup>st</sup> day of every month.

On February 27, 2015 the landlord issued a 1 Month Notice to End Tenancy for Cause to the tenant with a stated effective date of April 30, 2015 (the Notice). The Notice was sent to the tenant on March 3, 2015 by way of registered mail sent to the rental unit. The landlord orally provided a registered mail tracking number and testified that it the registered mail was returned as unclaimed.

The tenant has not yet vacated the rental unit and the landlord seeks to regain possession of the unit.

The landlord acknowledged that rent was received for the month of May 2015 and a receipt was issued "for occupation only". Rent was also received for June 2015 but a receipt was not given to the tenant.

#### Analysis

To end a tenancy, the landlord must serve the tenant with a Notice to End Tenancy in the approved form. Upon review of the Notice provided as evidence by the landlord, I find the Notice issued by the landlord is in the approved form and is otherwise valid.

A Notice to End Tenancy may be served by registered mail sent to the address at which the tenant resides. I accept the landlord's evidence that registered mail was sent to the tenant at the rental unit on March 3, 2015. As previously described in the Introduction of this decision, I find the tenant resides at the rental unit address and although the registered mail was returned, having regard for section 90 of the Act, I find the tenant is deemed to have received the 1 Month Notice five days after it was mailed, or March 8, 2015.

A tenant who 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 a tenant does not file to dispute the Notice, 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. Since the tenant did not file to dispute the Notice I find the tenant is conclusively presumed to have accepted that the tenancy would end on April 30, 2015 and given the conclusive presumption it was not necessary to hear the reasons for issuance of the 1 Month Notice during this hearing.

I am satisfied that the landlord has not acted to reinstate the tenancy by collecting rent while the tenant remains in occupation of the rental unit since the landlord had issued a receipt communicating the payment was for occupation only and the landlord had served the tenant with his Application for Dispute Resolution in May 2015 to put the tenant on notice that the landlord was seeking to regain possession of the unit. Since the rental unit remains in the the tenant's possession and the date of this hearing, I find it reasonable that the landlord would accept monies for occupation for June 2015.

Having found the tenancy has legally ended and that the tenancy has not been reinstated, I grant the landlord's request for an Order of Possession. Having regard for the tenant's payment for occupation of the rental unit for June 2015 I make the Order of Possession effective at 1:00 p.m. on June 30, 2015.

To enforce the Order of Possession it must be served upon the tenant in any of the ways provided for under section 88 of the Act.

As the landlord was successful in this Application I award the landlord recovery of the filing fee paid for this Application. The landlord is authorized to deduct \$50.00 from the tenant's security deposit in satisfaction of this award.

### Conclusion

The landlord has been provided an Order of Possession effective as of 1:00 p.m. on June 30, 2015 to serve and enforce as necessary.

The landlord's monetary claims were withdrawn and the landlord is at liberty to file another Application to seek monetary damages from the tenants as appropriate, within the time limit for doing so.

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: June 24, 2015

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Residential Tenancy Branch



