



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord on July 06, 2015 seeking to obtain an Order of Possession for cause and a Monetary Order to recover the cost of the filing fee from the Tenant for this application.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. The Landlord's daughter was in the same area with the Landlord observing the hearing and did not submit evidence. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. Each acknowledged receipt of evidence served by the other and no issues were raised regarding service or receipt of that evidence.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. Near the end of this hearing when I was explaining to the Tenant how my Decision was governed by the *Residential Tenancy Act (the Act)* the Landlord disconnected from the hearing at 9:29 a.m.

The hearing remained opened and the Tenant continued to be present. The Landlord signed back into the hearing at 9:37 a.m. at which time I told her that the Tenant did not present testimony during the Landlord's absence as my Decision had been explained to both parties prior to the Landlord disconnecting. I did however answer the Tenant's question that she could contact the Residential Tenancy Branch for information about the Review process and the Judicial Review process.

Following is a summary of the submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Has the Landlord proven entitlement to an Order of Possession?

### Background and Evidence

The undisputed evidence was the Tenant entered into a written fixed term tenancy that began on February 1, 2014 and switched to a month to month tenancy after three months. Rent was payable on the first of each month in the amount of \$560.00. On February 1, 2014 the Tenant paid \$222.50 as the security deposit and \$100.00 as the pet deposit.

On May 25, 2015 the Tenant was served a 10 Day Notice to end tenancy for unpaid rent and a 1 Month Notice to end tenancy for Cause when both Notices were posted to the Tenant's door.

The Landlord submitted that on approximately May 27, 2015 the Tenant paid the outstanding rent at which time the Landlord told the Tenant that the 10 Day Notice was cancelled and the 1 Month Notice still stood.

The 1 Month Notice was issued pursuant to Section 47(1) of the Act listing an effective date of **June 30, 2015** for the following reasons:

- Tenant is repeatedly late paying rent
- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - Put the Landlord's property at significant risk

The Landlord testified that since May 2014 the Tenant paid her rent late and in partial payments up to five different months. The most recent late payment occurred in May 2015. The Landlord submitted that the Tenant has also been drinking excessively causing disturbances to the other tenants and damage to the rental property. She said she has issued the Tenant numerous verbal warnings as well as a written warning on March 25, 2015.

The Landlord asserted that she is seeking an Order of Possession for as soon as possible to provide peace to the other Tenants. She submitted that August 2015 rent has been paid in full and that she will refund any portion of rent due to the Tenant when she vacates the unit.

The Tenant testified and confirmed receipt of the 1 Month Notice. She could not recall the exact date she received the Notices but thinks it may have been a day or two after it was posted to her door. She did not contact the Residential Tenancy Branch to dispute the Notice and argued that she could not file an application to dispute the Notice because she did not have enough money to file an application.

The 1 Month Notice was reviewed during the hearing during which the parties were directed to the top of the Notice where the following was written.

**TENANT: YOU MAY BE EVICTED IF YOU DO NOT RESPOND TO THIS NOTICE.**

[Reproduced as written in bold letters on the top of page 1 of the 1 Month Notice]

The Tenant stated that she must have missed that important information on the top of the Notice when she read it.

Page 2 of the 1 Month Notice served upon the Tenant included in part:

**INFORMATION FOR TENANTS WHO RECEIVE THIS NOTICE TO END TEANNCY**

- You have the right to dispute this Notice within 10 days after you receive it by filing an Application for Dispute Resolution at the Residential Tenancy Branch. An arbitrator may extend your time to file an Application, but only if he or she accepts your proof that you had a serious and compelling reason for not filing the Application on time.
- If you do not file an Application within 10 days, you are presumed to accept his Notice and must move out of the rental unit or vacate the site by the date set out on page 1 of this Notice (You can move out sooner.) If you do not file an Application, or move or vacate, your landlord can apply for an Order of Possession that is enforceable through the court.

[Reproduced as written in the third section of page 2 of the 1 Month Notice]

The Tenant disputed the Landlord's submission that she was told the 1 Month Notice still stood after she paid her rent. She later changed her testimony and stated that each time the Landlord accepted her rent payment the Landlord would ask her if she found another place to live yet because she was proceeding with her application to evict her.

The Tenant submitted that she has not had five occurrences of late payment of rent. She confirmed that she has been paying some of her rent in multiple payments and argued that she has only paid her rent late on three occurrences.

The Tenant denied causing any disturbances or damage to the rental unit and argued that she has written statements from numerous Tenants that support her being a good tenant.

The Landlord disputed the Tenant's submission and argued that she received a complaint from another tenant on May 25, 2015 that the Tenant came home late that day and caused a disturbance. She said the Tenant was throwing the eviction Notices around the rental unit and screaming that she was not going to move out of the rental unit.

As indicated above the Landlord signed back into the hearing at 9:39 at which time I informed both parties that my Decision had been issued and I was not hearing any more testimony or arguments and the hearing was concluded.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act.

Section 47(4) of the Act stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case I favored the Landlord's evidence that the Tenant received the 1 Month Notice in the evening of May 25, 2015. Therefore, the Tenant would have had to file her application for dispute no later than June 5, 2015. At the time the Landlord filed their application for an Order of Possession on June 6, 2015, the Tenant had not made application to dispute the 1 Month Notice.

Section 47(5) of the Act stipulates that if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and (b) must vacate the rental unit by that date.

Notwithstanding the Tenant's submission that she did not have money to file an application, I note that the Tenant made no effort to contact the RTB to find out how she could proceed or to obtain information about the fee waiver program. Furthermore, I find the Tenant was sufficiently informed of the requirements to dispute the 1 Month Notice within 10 days, as that information was clearly written on the 1 Month Notice the Tenant was served, as documented above.

In addition to the foregoing, even if the Tenant had filed an application to dispute the 1 Month, I conclude that there was sufficient evidence before me to prove the Tenant has repeatedly paid her rent late. Three late payments is sufficient evidence to uphold the 1 Month Notice and grant the Landlord an Order of Possession.

In the presence of the Tenant's contradictory testimony I favored the Landlord's submission that the Tenant was informed that the 1 Month Notice still stood. By her own submission the Tenant confirmed that each time she paid her rent the Landlord asked her if she had found a place to move to yet. Accordingly, the 1 Month Notice remained in full force and effect even though rent or use and occupancy has been paid up to and including August 1, 2015 rent.

When a 1 Month Notice is issued listing multiple reasons a landlord needs only to meet the burden of proof for one of the reasons.

As per the foregoing, I conclude the Landlord has met the burden of proof to uphold the 1 Month Notice issued May 25, 2015 for late payment of rent and the Tenant was conclusively presumed to have accepted this tenancy ended, pursuant to section 47(5) of the Act. Accordingly, I grant the Landlord's request for an Order of Possession.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

### Conclusion

The Landlord has been successful with their application and has been granted an Order of Possession and recovery of their \$50.00 filing fee.

The Landlord has been issued an Order of Possession effective **2 Days upon Service** to the Tenant. This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

The Landlord may withhold **\$50.00** from the Tenant's security deposit as full recovery of the filing fee awarded above.

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 14, 2015

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Residential Tenancy Branch

