



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on July 7, 2015 for an Order of Possession for cause, a Monetary Order for unpaid utilities, and to recover the filing fee from the Tenants.

Both Landlords appeared for the hearing and provided affirmed testimony. However, there was no appearance for the Tenants during the 30 minute duration of the hearing or any submission of evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlords for this hearing.

The Landlords both testified that the Tenants were each served a copy of the Application and the Notice of Hearing documents by registered mail on July 8, 2015. The Landlords provided the Canada Post tracking numbers into written evidence to verify this method of service.

Section 90(a) of the *Residential Tenancy Act* (the “Act”) states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by failing or neglecting to pick up mail and this reason alone cannot form the basis for a review of this decision. Based on the undisputed evidence of the Landlords, I find that the Tenants were each served notice of this hearing in accordance with Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlords.

### Preliminary Issues

At the start of the hearing, the Landlords were asked whether they had submitted a copy of the 1 Month Notice to End Tenancy for Cause (the “Notice”) which they were relying on to obtain an Order of Possession. The Landlords explained that they were not aware that they had to submit this prior to the hearing. The Landlords explained that the

Tenant had already been served a copy of the Notice. Therefore, I allowed the Landlord to provide a copy of the Notice to me by fax after the conclusion of the hearing pursuant to Rule 3.19 of the Rules of Procedure.

The Landlords were also allowed to provide me a copy of the tenancy agreement and utility bills relating to their monetary claim after the hearing had concluded. However, in consideration of this evidence, I find there is no evidence before me that the Landlords have served the Tenants with a copy of the utility bills with a 30 day demand letter for payment of them in accordance with Section 46(6) of the Act. Based on the foregoing, I decline to deal with the Landlords' monetary claim for unpaid utilities. However, the Landlords are at liberty to re-apply for this.

The Landlords also explained that a previous hearing had been held on August 12, 2015 between the same parties (the file number for which appears on the front page of this decision). The Landlords stated that they were informed by the Residential Tenancy Branch prior to that hearing that they did not need to appear for that hearing as it related to a notice to end tenancy which had been cancelled. The Landlords gave me permission to examine the decision from the Residential Tenancy Branch electronic file records pertaining to this previous hearing.

The previous decision cancels a notice to end tenancy for cause dated June 10, 2015. The Landlords explained that they had served the Tenants with a notice to end tenancy for cause on June 10, 2015 and realised soon after that they were not allowed to write their own reason on the notice to end tenancy. However, this hearing relates to a second Notice which was served on June 20, 2015 after the Landlords realised they had made a mistake on the June 10, 2015 notice to end tenancy.

#### Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession for the June 20, 2015 Notice?

#### Background and Evidence

This tenancy began on November 15, 2014 on a six month fixed term tenancy ending on May 31, 2015. After this time, the tenancy continued on a month to month basis. The Landlords testified that monthly rent is \$900.00 payable on the first day of each month and a \$450.00 security deposit was paid on November 14, 2014, which the Landlord still retains.

The Landlords testified that the Tenants had erected an illegal structure on the rental property which had resulted in by-law fines being issued to the Landlords. As a result,

the Landlords served the Tenants with the Notice because the Tenants had seriously jeopardized the health or safety or lawful right of the Landlords.

The Landlords testified that they served a copy of the signed Notice to the Tenants personally on June 20, 2015 and also placed a copy of the Notice in the Tenants' mail box on the same day. The Notice, provided into evidence after the hearing, shows a vacancy date of July 25, 2015. As the Tenants have failed to dispute the Notice, the Landlords now seek an Order of Possession to end the tenancy.

### Analysis

I find that the contents of the approved Notice complied with Section 52 of the Act. I also accept the Landlords' oral evidence that the Tenants were served the Notice personally on June 20, 2015 as well as placing a copy in the Tenants' mail box.

Sections 47(4) and (5) of the Act explain that if a tenant fails to make an Application to dispute the Notice within ten days after receiving the Notice, then they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

I find the Tenants had until June 30, 2015 to make an Application to dispute the Notice dated June 20, 2015. There is no evidence before me that the Tenants complied with Section 47(4) of the Act in relation to the Notice. Therefore, I find that the Tenants are conclusively presumed to have accepted the Notice and must move out of the rental suite.

Section 47(2) of the Act requires that the time period the Notice becomes effective must be for a **one full rental month**. As a result, the effective vacancy date of the Notice is corrected from July 25, 2015 to July 31, 2015 pursuant to Section 53 of the Act.

As the effective vacancy date of the Notice has now passed, the Landlords are entitled to an Order of Possession effective two days after service on the Tenant. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenants fail to vacate the rental suite. Copies of this order are attached to the Landlords' copy of this decision.

As the Landlords have been successful in this matter, the Landlords are also entitled to recover from the Tenants the \$50.00 filing fee for the cost of this Application. Pursuant to Section 72(2) (b) of the Act, the Landlords may achieve this relief by deducting this amount from the Tenants' security deposit.

Conclusion

The Tenants failed to dispute the Notice dated June 20, 2015. Therefore, the Landlords' Application for an Order of Possession is granted effective two days after service on the Tenants.

The Landlords may recover the \$50.00 filing fee from the Tenants' security deposit. The Landlords' Application for unpaid utilities is dismissed **with** leave to re-apply.

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: September 09, 2015

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Residential Tenancy Branch

