



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            OPC, OPB, FF

### Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution under the *Residential Tenancy Act* (the "Act") for an Order of Possession based on a Notice to End Tenancy for Cause issued on June 18, 2015 (the "Notice") as well as for breach of the tenancy agreement and to recover the filing fee.

The Landlord was represented by C.S., the president of the company, as well as C.D., who was named as a Landlord and who was also the property and accounting administrator for the corporate landlord. The Tenant, R.S. was at the hearing as was his friend R.J. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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

1. Is the Landlord entitled to an Order of Possession?
2. Should the Landlord recover the filing fee?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement. A month to month tenancy agreement between the parties began on or about November 1, 2014. Monthly rent in

the amount \$970.00 was due in addition to \$25.00 for parking on the first day of each month during the tenancy.

C.S. testified that he instructed the property managers, R.S. and S.S. to issue the Notice based on numerous complaints about the Tenant and his guests. The Notice indicated an effective vacancy date of July 31, 2015.

C.S. testified that the Notice was hand delivered and posted to the rental unit door on June 18, 2015 at 9:40 a.m. Introduced in evidence was a signed Proof of Service Notice to End Tenancy which confirmed that one of the managers, S.S., witnessed the other manager, R.S. hand deliver the Notice to the Tenant. According to the Proof of Service, the Tenant refused to sign for receipt of the Notice. C.S. testified that the managers then posted the Notice to the rental unit door. I accept the Landlord's evidence that the Tenant was personally served on June 18, 2015.

The Notice informs the Tenant that they had ten days from the date of service to dispute the Notice by filing an Application for Dispute Resolution, namely June 29, 2015 (as June 28, 2015 was a Sunday).

C.S. testified that the Tenant did not apply for dispute resolution. The Tenant confirmed he did not apply to dispute the Notice and claimed that he was unwell. The Tenant did not make an application for more time to dispute the Notice.

C.S. testified that he spoke to the Tenant on July 14, 2015 and advised the Tenant that he had to file for dispute resolution by June 29, 2015 and when he had not done so, the tenancy was to end. According to C.S., the Tenant stated that he was not going to leave the rental unit until the end of August.

The Landlord applied for dispute resolution on June 21, 2015.

C.S. provided testimony as to the reasons for issuing the Notice and stated that the Tenant and his guests have caused significant disruption to others in the rental building with their late night partying and drunken behaviour which causes others to feel unsafe.

C.S. further testified that the Tenant was warned on May 23, May 26, and June 17, 2015 that his behaviour was unacceptable. Introduced in evidence were letters on those same dates; notably, the Landlord identified the May 26, 2015 as the final warning.

Also introduced in evidence was a hand written letter dated June 17, 2015 from the managers R.S. and S.S. wherein the managers remind the Tenant that the loud profanity which continues to come from his balcony is unacceptable.

C.S. stated that on July 10, 2015 the police department attended because of the Tenant and his guests' excessive drunken behaviour. Introduced in evidence was an Incident Report dated July 13, 2015 and written by S.S. regarding this incident.

Also introduced in evidence was an undated incident report written by S.S. in which she describes a complaint from another occupant, B.W., who described the Tenant as stumbling, obviously intoxicated and incoherent. S.S. goes on to write that on July 9, 2015 the other manager, R.S. spoke with the Tenant about when he was moving. Apparently the Tenant stated he didn't have to move. S.S. further reports that she talked to the Tenant about his eviction notice, and reminded him that he had to move by July 31, 2015. According to S.S., he replied "later".

A further Incident Report dated June 11, 2015 was introduced in evidence where S.S. describes an incident beginning with a noise complaint about the Tenant and which culminated in the Tenant's guest becoming abusive with another resident and having to be escorted out of the building.

Introduced in evidence were letters from several other occupants of the rental building who complained about the Tenant and his guests' behaviour including a letter from L.R. on May 13, 2015; a letter from B.W. dated May 17, 2015; and, a letter from G.S. dated June 7, 2015. In each of these letters the writers describe loud noises from the rental unit late at night or in the early morning hours including music, yelling and profanity as well as the Tenant's drunken behaviour.

The Tenant testified that he received warnings from the Landlord but noted that on two occasions when he received a warning he was not home. Initially he testified that he never had any drunken people in his apartment, shortly thereafter he testified that it was in fact a female guest of his who caused all the disturbance and stated that they were no longer acquaintances.

The Tenant also initially denied receiving the Notice. He then testified that he was not able to attend or call the Branch as he had been the victim of a "truck fire" and was bed-ridden, unable to walk or speak. He did not provide any supporting evidence of this claim.

The Tenant stated that he had not paid rent for September 2015 as he believed the building is a "sick building" with mold issues.

Shortly thereafter the Tenant stated "my daughter died a year ago and I have been on a bender since" followed by his comment: "I didn't realize I had moved into a retirement home".

### Analysis

Based on the documentary evidence, the testimony of the parties, and on the balance of probabilities, I find the following.

The Tenant did not apply to dispute the Notice and is conclusively presumed, pursuant to section 47(5) to accept the end of the tenancy and must vacate the rental unit. The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* which will be effective at **1:00 p.m.**, two days after service. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that court.

I also find that the Landlord has met the burden of proving that the Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed other occupants of the rental building. The Tenant was warned that his behaviour was unacceptable and given an opportunity to correct his behaviour. The evidence from other occupants confirms that the Tenants behaviour is unreasonably disturbing. Even the Tenant admitted he had “been on a bender”.

As I have ended the Tenancy for cause, I need not consider whether the Tenant has breached the tenancy agreement.

As the Landlord’s application had merit, I grant the Landlord the recovery of the \$50.00 filing fee. I grant the Landlord authority to deduct the \$50.00 from the security deposit of \$485.00 held by the Landlord.

#### Conclusion

The Landlord is entitled to an Order of Possession. I grant the Landlord permission to deduct \$50.00 from the Tenant’s security deposit to compensate the Landlord for the filing fee.

This decision is final and binding on the parties, unless 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*.

Dated: September 17, 2015

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Residential Tenancy Branch

