



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Al Stober Construction Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FF, LAT, LRE, MNR, OPR, MNSD

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, a request for a Monetary Order for \$2569.00, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit of \$500.00 towards the claim.

The tenants application is a request for an Order canceling the Notice to End Tenancy for nonpayment of rent, requesting an Order to suspend or set conditions on the landlord's right to enter the rental unit, requesting authorization to change the locks to the rental unit, and requesting recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

The issues are:

- Whether or not the landlord has established the right to an Order of Possession.
- Whether the landlord has established a monetary claim against the tenant and if so in what amount.
- Whether to cancel or uphold a Notice to End Tenancy that was given for nonpayment of rent.
- Whether to suspend or set conditions on the landlord's right to enter the rental unit.
- Whether to authorize the tenant to change the locks on the rental unit.
- And whether to Order recovery of the filing fees.

### Background and Evidence

The tenant paid a security deposit of \$500.00 on September 28, 2012 and the tenancy began on October 1, 2012 with a monthly rent of \$1022.00.

The landlord testified that the tenant failed to pay the September 2015 rent and therefore on September 4, 2015 a 10 day Notice to End Tenancy was posted on the tenant's door.

The landlord further testified that the tenant has failed to comply with that notice and has failed to pay any further rent, and therefore they are requesting an Order of Possession for as soon as possible, and a Monetary Order for the outstanding rent which now totals \$2044.00.

The landlord further testified that there is a \$25.00 late fee clause in the tenancy agreement, and therefore they are also requesting a \$25.00 late fee for the month of September 2015.

The tenant testified that he did receive the 10 day Notice to End Tenancy on September 7, 2015, however on September 12, 2015 he received an e-mail from the landlord which stated "Sept 12 of the last day of your tenancy as rent has not been paid. You need to move out as of 1 PM today".

The tenant further stated that since the landlord was requesting that he move out before the day he was required to under the 10 day notice, he accepted this as a two month Notice to End Tenancy for landlord use and will be moving on November 11, 2015 in compliance with section 49 of the Residential Tenancy Act. The tenant further stated that he expects compensation for moving in the amount of the equivalent of three months' rent.

### Analysis

Section 46(1) of the Residential Tenancy Act states:

**46** (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Therefore since the tenant did not pay the September rent when due on September 1 the landlord did have the right to end the tenancy with a 10 day notice.

Further, sections 46(4) & 46(5) of the Residential Tenancy Act state:

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or 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 to which the notice relates by that date.

In this case the tenant did not pay the overdue rent, and did not make an application to dispute the notice within the timeframe required and therefore the tenant is conclusively presumed to have accepted that the tenancy ends, and he must vacate the rental unit.

The tenant's argument that the e-mail received from the landlord on September 12, 2015 effectively turned the notice into a two month Notice to End Tenancy for landlord use is not a valid argument. The landlord has not served a two month Notice to End Tenancy on the tenant, and the 10 day Notice to End Tenancy that the landlord served is still a valid Notice to End Tenancy.

I therefore will not allow the tenants request to cancel a Notice to End Tenancy or the request for recovery of his filing fee.

I will allow the landlord's request for an Order of Possession.

I also allow the landlord's request for an Order for the outstanding rent for the months of September 2015 and October 2015, and for an Order for recovery of the \$50.00 filing fee, for a total amount of \$2119.00.

Since this tenancy is ending I will make no order suspending the landlord's right of entry or authorizing the tenant to change the locks.

### Conclusion

The tenant's application is dismissed in full without leave to reapply.

Pursuant to section 55 of the Residential Tenancy Act I have issued an Order of Possession that is enforceable two days after service on the tenant.

I have allowed \$2119.00 of the landlords monetary claim and therefore pursuant to section 72(2)(b) of the Residential Tenancy Act I Order that the landlord may retain the full security deposit of \$500.00 towards this claim and pursuant to section 67 of the Residential Tenancy Act I have issued a Monetary Order in the amount of \$1619.00.

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: October 21, 2015

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Residential Tenancy Branch