



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPL, OPM

### Introduction

The hearing was convened in response to an Application for Dispute Resolution, in which the Landlord has applied for an Order of Possession for Landlord's Use of Property and because the Landlord and the Tenant mutually agreed to end the tenancy.

The Landlord stated that on September 02, 2015 he personally served the Tenant with the Application for Dispute Resolution, the Notice of Hearing, and the two documents the Landlord submitted to the Residential Tenancy Branch in support of this Application. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 89 of the *Act*; however the Tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord stated that:

- the tenancy began on June 01, 2013;
- the tenant agreed to pay monthly rent of \$450.00 by the first day of each month; and
- on July 01, 2015 the Landlord personally served the Tenant with a letter, dated July 01, 2015, which he refers to as a Two Month Notice to End Tenancy.

The Landlord submitted a copy of the letter dated July 01, 2015 which he refers to as a Two Month Notice to End Tenancy. This letter declares that the Tenant must move out of the rental unit by July 31, 2015 because his son is moving into the room being used by the Tenant. The letter is not signed by the Landlord.

The Landlord is seeking an Order of Possession on the basis of the letter he gave the Tenant on July 01, 2015 and because the Tenant agreed, in writing, that he would move out.

The Landlord submitted a letter that appears to be signed by the Tenant, dated July 31, 2015. In the letter the Tenant promises declares that he “asked” the Landlord to let him remain in the rental unit until the end of August of 2015 and he promised the Landlord he will move out at the end of August.

The Landlord contends that the letter from the Tenant, dated July 31, 2015, serves as a mutual agreement to end the tenancy.

### Analysis

Section 49 of the *Residential Tenancy Act (Act)* authorizes a landlord to end a tenancy for a variety of reasons, including when a close family member of the landlord, intends in good faith to occupy the rental unit. Section 49(7) of the *Act* stipulates that notice to end tenancy served pursuant to section 49 of the *Act* must comply with section 52 of the *Act*.

Section 52(e) of the *Act* stipulates that in order to be effective, a notice to end a tenancy must be in writing and must when given by a landlord, be in the approved form. The approved form for serving notice to end a tenancy pursuant to section 49 is a Two Month Notice to End Tenancy for Landlord’s Use of Property (RTB-32).

On the basis of the evidence submitted by the Landlord, I find that the Landlord attempted to end this tenancy pursuant to section 49 of the *Act* by providing the Tenant with a letter informing him the tenancy was ending. As the Landlord did not give notice to end this tenancy on form RTB-32, I find that he has not served the Tenant with an effective notice to end the tenancy as is required by section 52(e) of the *Act*.

Section 10(2) of the *Act* stipulates that deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used. I find that the letter the Landlord served to end this tenancy failed to include essential information and cannot be relied upon to end this tenancy in accordance with section 49 of the *Act*. Among other things, the letter failed to inform the Tenant that he has the right to dispute the Two Month Notice to End Tenancy and it failed to inform him that he has the right to compensation because he was served with a Two Month Notice to End Tenancy.

As the Landlord has not served the Tenant with an effective Two Month Notice to End Tenancy, I find that the tenancy did not end pursuant to section 49 of the *Act* and the Landlord is not entitled to an Order of Possession on the basis of this Notice.

Section 45 of the *Act* authorizes a tenant to end a tenancy by giving proper written notice to end a tenancy. I find that the letter from the Tenant, dated July 31, 2015, does not serve to end this tenancy in accordance with section 45 of the *Act*. I interpret this

letter to be a request from the Tenant to stay past the deadline imposed by the letter the Landlord served him on July 01, 2015. In my view, this letter indicates that the Tenant believes he must move out of the rental unit and he is simply promising to comply with the requirement on August 31, 2015. Given that the Tenant is not obligated to vacate the rental unit on the basis of the letter of July 01, 2015 and he does not appear to wish to vacate the tenancy, I cannot conclude that this letter is a notice to end tenancy served pursuant to section 45 of the *Act*.

As the Tenant has not ended this tenancy in accordance with section 45 of the *Act*, I find that the Landlord is not entitled to an Order of Possession on the basis of section 45 of the *Act*.

Section 44(1)(c) of the *Act* authorizes landlords and tenants to end a tenancy by mutual consent. For the same reasons outlined in my analysis regarding whether the Tenant gave written notice to end this tenancy, I find that the letter dated July 31, 2015 does not indicate that the Tenant agreed to end this tenancy.

As this tenancy has not ended by mutual consent, I find that the Landlord is not entitled to an Order of Possession on the basis of section 44(1)(c) of the *Act*.

### Conclusion

The Landlord has failed to establish that he is entitled to an Order of Possession and I dismiss his Application for Dispute Resolution in its entirety. The Landlord retains the right to end this tenancy pursuant to section 49 of the *Act* by serving the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (RTB-32).

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 07, 2015

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Residential Tenancy Branch

