



# 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 a landlord's application for an Order of Possession for cause. The tenant did not appear at the hearing. The landlord testified that the hearing documents were sent to the tenant via registered mail using the tenant's post office box. The landlord explained that the town where the rental unit is located does not have mail delivery beyond a post office box and that the tenant had texted her post office box number to him. The registered mail was returned as unclaimed.

I requested the landlord provide me with a photograph of the text message and a photocopy of the registered mail envelope that was returned to him. The landlord provided the requested evidence which included a text message sent by the tenant on August 12, 2015, the registered mail envelope that was returned to the landlord, and the registered mail receipt indicating the registered mail was sent on August 14, 2015. The post office box number appearing in the text message and on the registered mail envelope are the same. Accordingly, I was satisfied the landlord sent the hearing documents to the tenant at an address at which she can receive documents.

Section 90 of the Act provides that a person is deemed to have received documents five days after mailing, even if the person refuses to accept or pick up their mail.

In light of the above, I found the tenant to be deemed served with the hearing documents five days after mailing or August 19, 2015.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The one year fixed term tenancy commenced on April 1, 2015. The tenant is required to pay rent of \$1,200.00 on the 2nd day of every month.

On July 3, 2015 the landlord issued a 1 Month Notice to End Tenancy for Cause and served it upon the tenant that same day, in person, in the presence of a witness. The 1 Month Notice has a stated effective date of September 2, 2015 and indicates the reason for ending the tenancy is "repeated late payment of rent". The landlord had provided a copy of a 1 Month Notice that he had printed on July 3, 2015 and I noted that the copy before me was not signed. The landlord affirmed that the Notice he gave to the tenant was signed by him.

The landlord testified that the tenant did not file to dispute the 1 Month Notice. I heard that the tenant did pay rent for August and September 2015 but did not pay any rent for October 2015. The landlord also issued emails to the tenant advising her that he was accepting the payments for August and September 2015 for use and occupancy only. I heard that in communications with the tenant the tenant informed the landlord that she would pay her rent on time but that she would not be moving out which led to the landlord filing this Application. The landlord requested an Order of possession effective as soon as possible.

I noted that the landlord had provided copies of several emails or text messages exchanged between the parties. Nevertheless, I requested the landlord provide me with proof of service of the 1 Month Notice and a copy of the tenancy agreement. The landlord provided a signed Proof of Service indicating the 1 Month Notice was served upon the tenant in person by the landlord on July 3, 2015 and it includes a signature of a witness. The tenancy agreement provided by the landlord was missing the signature page although the landlord explained he had misplaced that page during the hearing.

### Analysis

Section 47(5) of the Act provides that a tenant in receipt of a 1 Month Notice to End Tenancy for Cause has 10 days to file an Application for Dispute Resolution to dispute the Notice and if a tenant does not dispute the Notice the tenant is conclusively presumed to have accepted that the tenancy will end and must vacate the rental unit by the effective date of the notice.

I accept the undisputed evidence before me that the landlord served the tenant with a signed 1 Month Notice to End Tenancy for Cause, in person, on July 3, 2015. Since the

tenant did not file an Application to dispute the Notice I find that, pursuant to section 47(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy would end on the effective date.

Since the 1 Month Notice was served on July 3, 2015 the earliest the Notice could have been effective was September 1, 2015 based upon the day rent is payable. The subject Notice has a stated effective date of September 2, 2015 which is more time to vacate than was required under the Act. The landlord filed his application on August 7, 2015 and accepted rent on September 2, 2015 for use and occupancy and I am satisfied the landlord did not act in such a way as to reinstate the tenancy. Considering the tenant did not pay any monies for use and occupancy for October 2015 I grant the landlord's request for an Order of Possession effective as soon as possible. Therefore, I provide the landlord with an order of Possession effective two (2) days after service.

I award the landlord recovery of the filing fee. Provided to the landlord is a Monetary Order in the amount of \$50.00 to serve and enforce. Alternatively, the landlord is authorized to recover this award by deducting \$50.00 from the tenant's security deposit.

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

The landlord is awarded recovery of the filing fee.

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 27, 2015

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Residential Tenancy Branch

