



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, MNR, FF

### Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord served with application for dispute resolution and notice of hearing (the “Package”) to the Tenant by posting the Package on the door of the unit.

Section 89 of the Act provides that where an application includes a claim for a monetary order, no allowance is made to serve the application by posting it on the door of the rental unit. As the Landlord only served the Package by posting it on the door, I dismiss the claim for unpaid rent with leave to reapply.

The Tenant did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

### Background and Evidence

The rental unit was purchased in December 2015. The Landlord was only informed that the tenancy of the basement suite started a couple of years ago. Rent of \$1,200.00 is payable

monthly on the first day of each month. The Landlord was told by the previous landlord that no security deposit was paid at the outset of the tenancy.

On April 29, 2016 the Landlord served the Tenant with a two month notice to end tenancy for landlord's use (the "Notice") by posting the Notice on the door of the unit. The effective date set out on the Notice is May 15, 2016. The reason for the Notice is that the Landlord intends to occupy the unit.

The Landlord states that the Tenants are just now in the process of moving out of the unit, that no rents have been paid to the Landlord and that the Landlord has not given the Tenant the equivalent of one month's rent payable as compensation to the Tenant for the Landlord ending the tenancy.

#### Analysis

Section 90 of the Act provides that a document if given or served by attaching a copy of the document to a door or other place is deemed to be received on the 3rd day after it is attached. AS the Notice was served by attaching it to the door on April 29, 2016 I find that it is deemed to have been received on May 2, 2016.

Section 49 of the Act provides that a landlord may end a tenancy for landlord's use by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Section 53 of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed to comply with the Act. As the Notice was deemed served on May 2, 2016 I find

that the effective date of May 15, 2016 is not a correct effective or move-out date and is automatically corrected to July 31, 2016.

Section 49 of the Act provides that upon receipt of a two month notice to end tenancy for landlord's use the tenant may dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. As the Tenant has not disputed the Notice, has not fully moved out of the unit and as the effective has been corrected to July 31, 2016, I find that the Landlord is entitled to an order of possession for the effective date of the Notice.

As the Landlord's application has met with mixed success and considering that the Landlord likely did not have to make the application given the move-out date for the Notice and the evidence that the Tenants are now in the process of moving out, I decline to award recovery of the filing fee and I dismiss that claim.

#### Conclusion

**I grant** an Order of Possession to the Landlord effective 1:00 p.m. on July 31, 2016.

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: June 13, 2016

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Residential Tenancy Branch