



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MCLAREN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

OPC

### Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution wherein the Landlord requested an Order of Possession based on a 1 Month Notice to End Tenancy for Cause issued on August 12, 2016 (the "Notice").

Only the Landlord's representatives, M.P., and L.M. appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

M.P. testified that she served the Tenant with the Notice of Hearing and the Application on September 26, 2016 by posting to the rental unit door. L.M. also testified that she witnessed M.P. post the Notice of Hearing and Application for Dispute Resolution on the rental door. This is acceptable service of an application for an Order of Possession pursuant to section 89(2)(b) of the *Residential Tenancy Act*, and pursuant to section 90, such service is deemed served three days after posting; accordingly, I find that the Tenant was served as of September 29, 2016.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Is the Landlord entitled to an Order of Possession?

### Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement which provided that this tenancy began October 1, 2013.

M.P. testified that the issues with the Tenant have been ongoing for some time. She stated that these issues include his failure to keep his rental unit in a reasonable condition, his inability to care for his pets, his abusive behaviour towards staff and most recently, his inability to care for himself after suffering a stroke.

Photos of the rental unit submitted by the Landlord show considerable garbage, human and feline waste. M.P. stated that these photos were taken before his stroke.

M.P. further testified that the home in which the rental unit is located is not equipped to provide the medical support the Tenant requires. M.P. stated that they have attempted to work with the Tenant to assist him but this has been unsuccessful. She further testified that the other occupants of the rental building are immunocompromised and as such their health and safety is impacted by the Tenant's behaviour. Specifically, M.P. stated that other occupants have complained about the odour from the Tenant's rental unit as well as from the Tenant's person while in the common cooking area.

M.P. testified that Notice was served on the Tenant on August 12, 2016 by attaching to the rental unit door. A copy of the Proof of Service—Notice to End Tenancy was provided in evidence. Pursuant to section 90, documents served in this manner are deemed served three days later; namely August 15, 2016. The Notice informed the Tenant that he had ten days in which to apply to dispute the Notice. M.P. confirmed that the Tenant failed to apply for dispute resolution.

The reasons cited on the Notice were that the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk.

### Analysis

Based on the above, the Landlord's undisputed testimony and evidence, and on a balance of probabilities, I find as follows.

The Tenant did not attend the hearing and is therefore conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice.

Accordingly, I find that the Landlord is entitled to an Order of Possession effective **two (2) days** after service on the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I also find that the Landlord has proven, on a balance of probabilities, that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;

seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the Landlord's property at significant risk.

Section 32 (2) of the *Act* requires a Tenant to maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and common areas. The testimony of the Landlord's agents and the evidence filed in support, including the photos of the rental unit, show that the Tenant has failed to maintain the rental unit to such a standard. I accept the Landlord's evidence that other occupants' health and safety have been seriously jeopardized by the Tenant's failure to maintain his rental unit and his person in a sanitary way. I further find that the condition of the rental unit has put the Landlord's property at a significant risk. As well, I find that the Landlord has sufficiently warned the Tenant that his refusal to rectify this situation may jeopardize his tenancy.

In all the circumstances, I find that Landlord has proven cause to end the tenancy.

The Landlord's agents stated that they are hopeful that the Tenant will be able to move to an assisted living facility that is equipped to help him. M.P. testified that the Landlord was committed to helping the Tenant transition to a more appropriate and supportive environment. I sincerely hope that the end of this tenancy will be a benefit to this Tenant and will facilitate his move to a more appropriate living environment.

### Conclusion

The Tenant failed to dispute the Notice and as a result the Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy. The Landlord is granted an Order of Possession, effective two days after service on the Tenant.

This decision is final and binding on the parties, except as 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: November 17, 2016

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Residential Tenancy Branch

