



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC FF

### **Introduction:**

Both parties attended the hearing and gave sworn testimony. The landlord said she served a One Month Notice to End Tenancy for cause dated October 9, 2016 to be effective November 9, 2016. She corrected the effective date in the hearing to November 31, 2016 as she said she became aware of section 53 of the Act and the full one month notice required. She testified she served it by registered mail but the tenant said he did not receive it and contended there was a problem with it because she had put the return address on the envelope as that of the Residential Tenancy Branch and not her own address. I verified online the tracking information. I found the Notice to End Tenancy was mailed on October 4, 2016 and was available for pickup on October 6, 2016. Notices were left for the tenant but after his failure to pick it up, it was returned on October 23, 2016. Pursuant to sections 71 and 90 of the Act, I find the Notice to End Tenancy is deemed to be served for the purposes of this hearing. I find the landlord served the Application personally on December 23, 2016 and the tenant signed to acknowledge receipt. I find the documents were legally served for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession based on a Notice to End Tenancy for cause pursuant to section 47;
- b) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 47 and they are entitled to an Order of Possession? Is the landlord entitled to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced April 16, 2011, it is now a month to month tenancy, rent is \$720 a month

and a security deposit of \$360 was paid in April 2011. The landlord served a Notice to End Tenancy pursuant to section 47 of the Act for causes (among others) listed as

- (a) The tenant has been repeatedly late in paying the rent.
- (b) The tenant has engaged in illegal activity that has, or is likely to:
  - (i) Damage the landlord's property.
  - (ii) Jeopardize a lawful right or interest of another occupant or the landlord.
- (c) The tenant has caused extraordinary damage to the unit

The landlord provided a detailed ledger and gave oral evidence that the tenant has been late in paying rent from January to November 2016 inclusive. She accepted rent for December 2016 and January 2017 but gave him a receipt noting it was "for use and occupancy only" as she did not want to reinstate the tenancy. In her evidence she listed other causes and provided photographs but as I pointed out, one cause under section 47 if proved is sufficient to end the tenancy for cause.

The tenant contended he was only one or two days late and he paid by cash. He said he had to find the landlord to pay her sometimes.

Included with the evidence are rent receipts, proof of service, the Notice to End Tenancy, a registered mail receipt, the rent ledger and a Breach letter in February 2016 reminding the tenant that rent is payable on the 1<sup>st</sup> of the month and further late payments could result in a Notice to End Tenancy. There are also letters regarding other possible causes such as safety issues, the tenancy agreement and photographs.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that there is repeated late payment of rent. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the reason cited, namely, that the tenant repeatedly paid his rent late. I find the landlord's evidence is well supported by her tenant ledger listing dates of payment and by the letter she issued in February 2016 concerning his late payments. Although the tenant contended he was only one or two days late, I find that even one day is late as rent is payable on the 1<sup>st</sup> of each month according to his tenancy agreement. I find the tenancy ended on November 30, 2016 (as corrected). I find the landlord entitled to an Order of Possession effective February 15, 2017 as she agreed to this extension.

I find any one cause under section 47 is a sufficient cause, if proven, to end a tenancy. As I find the repeated late payment of rent was proven as sufficient cause, I decline to consider the other causes noted in the Notice to End Tenancy.

**Conclusion:**

I find the tenancy ended on November 30, 2016. I find the landlord entitled to an Order of Possession effective February 15, 2017 as agreed and to recover her filing fee for this application.

**I HEREBY ORDER that the landlord may deduct \$100 from the security deposit of the tenant to recover this filing fee. \$260 security deposit will remain in trust with the landlord to be dealt with pursuant to section 38 of the Act after the tenant has vacated.**

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: January 25, 2017

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Residential Tenancy Branch