



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC MND FF

### **Introduction:**

Only the landlord attended the hearing and gave sworn testimony. The One Month Notice to End Tenancy is dated April 1, 2016 to be effective April 30, 2016 and the landlord said he served this on April 1, 2016 and the Application for Dispute Resolution by posting them on the tenant's door. The effective date on the Notice is automatically corrected to May 31, 2017 pursuant to section 53 of the *Residential Tenancy Act* (the Act) as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. I find the documents were legally served pursuant to sections 88 and 89(2) of the Act for the purposes of obtaining an Order of Possession in this hearing. However, if the landlord wishes to obtain a monetary order, I find he must serve an Application according to section 89(1) of the Act, that is personally, or by registered mail. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for cause pursuant to section 47;
- b) To retain the security deposit for damages done by the pet; and
- c) 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 retain the security deposit and recover the filing fee?

### **Background and Evidence**

Only the landlord attended the hearing although I find the tenant was served Notice of the hearing. The landlord was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced July 15, 2016, rent is \$1350 payable the first of each month and a security deposit of \$675 was paid.

The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant is repeatedly late paying rent;
- b) There was a material breach of the tenancy agreement which was not corrected within a reasonable time.

The landlord said the tenant was always late in paying rent but he provided no evidence of this such as a rent ledger or receipts. In respect to the material breach of the tenancy agreement, the landlord said the tenant got a pit bull dog without consent which breached their lease. It attacked a former tenant who had come to pick up mail. The landlord said he gave a warning letter to the tenant in March 2017 to remove the dog but they have not. He requests an Order of Possession and to keep the security deposit for damages done by the dog both inside and outside the home.

In evidence are warning letters in March 2017 concerning the breach of the lease and giving the tenant until March 31, 2017 to have the dog removed. In evidence also is the One Month Notice to End Tenancy, proof of service and a statement concerning the attack of the dog in February 2017.

**Analysis:**

Section 47 of the Act provides a landlord may end a tenancy if there is sufficient cause. Causes, any one of which may be a sufficient reason, are listed in that section. I find section 47(4) states a tenant has 10 days to dispute the Notice to End Tenancy. If they do not file an application to dispute within this time, I find section 47(5) provides they are conclusively presumed to have accepted the end of the tenancy on the date set out on the notice and must vacate the rental unit by that date. However, I find the effective date on the Notice is automatically corrected to May 31, 2017 by section 53 of the Act. As that is tomorrow's date, I find the landlord entitled to an Order of Possession effective two days from service.

As explained to the landlord in the hearing, he did not serve the Application according to section 89(1) which means he did not serve by an effective method of service to obtain a monetary order against the tenant. He said he waives the request to retain the security deposit at this time and asks for an Order of Possession.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective two days from service. I find him entitled to recover the filing fee. I dismiss his claim for damages due to incorrect service of the Application and I give him leave to reapply for damages within the legislated time limits.

**I HEREBY ORDER THAT the landlord may deduct \$100 from the security deposit to recover his filing fee. This will leave \$575 security deposit in trust.**

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: May 31, 2017

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Residential Tenancy Branch