



# 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 Notice to End Tenancy is dated April 9, 2017 to be effective May 9, 2017 and the tenant confirmed it was served personally on them. The effective date on the Notice is automatically corrected to May 31, 2017 pursuant to section 53 of the *Residential Tenancy 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. The landlord testified they served the Application for Dispute Resolution personally and the tenant agreed they received it. I find the documents were legally served pursuant to section 89 of the Act 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 for cause of repeated late payment of rent and other causes pursuant to section 47;
- b) To obtain a monetary order for unpaid rent; and
- c) To recover the filing fee for this application.

### **Preliminary Issue:**

Today I received a copy of a fax with a Tenant Application for Dispute. There was no date stamped on it to indicate it had been filed with the Residential Tenancy Branch and I was not informed that there was a joint Application from the tenant. The tenant said it was confusing and he asked for an adjournment to get a lawyer.

Rule 6 of the Residential Tenancy Branch Rules of Procedure provide rules on rescheduling and adjournments. Rule 6.1 states the Branch will reschedule if written consent is received from both parties at least 3 days before the scheduled date for the hearing. I find insufficient evidence that the tenant tried to obtain consent from the landlord to reschedule the hearing or that he ever filed an Application.

Rule 6.3 provides an arbitrator may adjourn the proceeding after the hearing commences. The criteria for granting an adjournment are set out in Rule 6.4. In applying the criteria, I find there would be considerable prejudice to the landlord in

adjourning the hearing as the landlord filed their application on May 8, 2017 and the tenant agrees he owes \$1420 for unpaid rent as he has not paid rent for the past two months. I also find an adjournment is unlikely to contribute to a resolution of the matter and is unnecessary to allow a fair opportunity for each party to be heard. The parties were given the opportunity to make submissions and raise issues in the hearing and I find had a fair hearing. I declined to grant an adjournment and the hearing proceeded.

**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? Are they entitled to a Monetary Order for unpaid rent and 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 in November 2016, rent is \$700 a month and a security deposit of \$300 was paid. The landlord served a Notice to End Tenancy pursuant to section 47 of the Act stating the following:

- The tenant has been repeatedly late in paying the rent.
- The tenant or a person permitted on the property by them has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord provided evidence that the tenant still owes \$20 from November 2016, and paid the rent late in January 2017 (Jan. 5), in February (Feb. 4). In March he made partial payments on March 3 (\$300) and on March 5 (\$400). In April he made partial payments on April 3 (\$300) and April 4 (\$400). She stated he has also not paid any rent for May or June 2017.

The tenant agreed he still owes \$20 from November 2016 and said he withheld it because internet was not provided as agreed. He also agrees he has not paid rent for May or June 2017 and said it is because of the ongoing internet problem. He said the landlord gave no receipts and it is her obligation to do so. The landlord said her two other tenants did not require receipts and this tenant never asked for one. She said she kept detailed notes of when rent payments were made.

A large amount of written evidence was submitted by the landlord from neighbours complaining about this tenant's behavior which they found significantly disturbing. Included with the evidence are

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 cause to end the tenancy pursuant to section 47 of the Act. I find any one cause as listed in section 47, if proven, is sufficient to end the tenancy.

I find the evidence of the landlord credible in respect to the first reason cited, namely, that the tenant is persistently late in paying rent. Section 26 of the Act states a tenant must pay rent when due even if the landlord is not fulfilling their obligations under the Act. I find the weight of the evidence is that the tenant was late in November 2016 as he still owes \$20 for that month. I find he also paid late every month from January to April 2017 and he has paid no rent for May and June 2017. Although the tenant contended the landlord did not give receipts, I found her evidence credible regarding the late payments as she was able to give specific dates when rent or partial rent was paid. The tenant did not provide dates of when he allegedly paid rent. I find the landlord has proven good cause to end the tenancy. The tenancy is ended on May 30, 2017 (as corrected). An Order of Possession is issued effective June 30, 2017 as agreed by the parties.

As the first cause of persistent late payment was proven sufficient to end the tenancy, I find it is not necessary to consider other causes and accusations by neighbours. I advise the landlord to read section 26 of the Act regarding her obligation to give receipts for rent paid in cash.

**Monetary Order:**

I find the tenant owes \$20 rent from November 2016 and \$700 for each of May and June 2017. I find the landlord entitled to a monetary order for \$1420 in unpaid rent and rental loss.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective June 30, 2017 and to a monetary order as calculated below. I find her entitled to retain the security deposit to offset the amount owing and to recover filing fees for this Application.

Unpaid rent and rental loss Nov. 2016- June 2017	1420.00
Filing fee	100.00

Less security deposit	-300.00
<b>Total Monetary Order to Landlord</b>	<b>1220.00</b>

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 15, 2017

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Residential Tenancy Branch