



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes:** OPC, OPB, FF

### Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession pursuant to a notice to end tenancy for cause and for a monetary order for the recovery of the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant himself did not attend the hearing and was represented by his advocate (NM). NM testified that the tenant had not received the notice of hearing package for this hearing today which is to address the landlord's application for dispute resolution.

The advocate stated that he found out about this hearing on August 01, 2017 when he received an email from the Residential Tenancy Branch in response to the tenant's application to dispute the notice to end tenancy for cause.

The landlord stated that he served the notice of hearing package which included his documentary evidence, in person to the tenant on July 14, 2017. The landlord stated that he had proof of service of the package which was signed by the tenant. However the landlord failed to send this piece of evidence to the Residential Tenancy Branch and NM was firm in his testimony that the tenant had not been served with the package.

Even if I accept NM's testimony that the tenant was not served with a notice of hearing and evidence package, I find that the tenant was notified by the Residential Tenancy Branch by email prior to August 01, 2017 that the landlord had applied for dispute resolution and that a hearing was scheduled for this date.

Therefore I find that the tenant was notified of the date, time and codes required to participate in this hearing. However since the landlord has not proven service of the evidence package on the tenant, the evidence provided by the landlord will not be used in the making of this decision.

### **Issues to be decided**

Did the landlord serve a valid notice to end tenancy? Did the tenant apply to dispute the notice in a timely manner?

### **Background and Evidence**

The tenancy started on April 25, 2017 for a fixed term of two months. A tenancy agreement was filed into evidence and NM agreed that he had a copy of the tenancy agreement before him. In the tenancy agreement the tenant had signed in acknowledgement that the tenancy would end on the end date of the fixed term. However, the landlord had failed to check mark this option. The monthly rent is \$480.00 due in advance on the first day of each month.

The rental unit is located in a building that houses a total of 41 rental units. The landlord stated that he received complaints regarding the aggressive behaviour of the tenant and his guests towards other occupants of the building. He testified that the tenant had addiction issues and allowed homeless people into the building to use the common facilities. There was a complaint that one of the tenant's guests broke into a rental unit and stole some items belonging to that occupant. The landlord also described visits by the police and paramedics to deal with overdoses by the tenant and/or his guests.

On June 24, 2017, the landlord served the tenant with a notice to end tenancy for cause with an effective date of July 31, 2017. The landlord filed proof of service of the notice to end tenancy, to the tenant by posting the notice on the tenant's door.

NM stated that the tenant brought the notice to him on June 26, 2017 and shortly after that, NM made several attempts to call the tenant to set up a meeting to discuss the course of action. The tenant contacted NM on July 25, 2017 and an application to dispute the notice was made on July 28, 2017. An information officer informed NM that the landlord had made application and that it was too late to join the tenant's application to be heard at today's hearing.

NM testified that the reason for the delay in making application beyond the legislated time frame of 10 days is that the tenant is a drug user and has mental health issues. NM stated that the tenant had extenuating circumstances that prevented him from making a timely application for dispute resolution. A hearing is set for October 16, 2017 to hear the tenant's application.

NM did not file any documents to support the alleged extenuating circumstances that prevented the tenant from making this application within the legislated time frame. He stated that he intended to address this issue at the hearing in October 2017.

The landlord agreed to let the tenancy continue till October 31, 2017 and requested an order of possession for that date, in the event that I uphold the notice to end tenancy.

### **Analysis**

Based on the testimony of both parties, I find that the tenant was served with a valid two page notice to end tenancy for cause, that complies with section 52 of the *Residential Tenancy Act* (form and content of notice to end tenancy). The notice was served on the tenant on June 24, 2017, by posting the notice on the tenant's door.

NM acknowledged that the tenant received this notice by June 26, 2017 at which time the tenant contacted NM for assistance. An application to dispute this notice should have been made no later than July 07, 2017 but was made on July 28, 2017 which is well beyond the legislated time frame of ten days to make an application to dispute a notice to end tenancy for cause.

Even though NM testified that the tenant had extenuating circumstances for the delay, NM did not provide any documentary evidence to support his testimony. The reasons cited by NM for the delay were that the tenant has addiction and mental health issues.

NM stated that the reason for not providing evidence is that he was not served with the landlord's notice of hearing package. However by his own testimony which is corroborated by the electronic history on the landlord's file, NM was notified of this hearing on August 01, 2017.]

This hearing took place on August 17, 2017. The tenant and his advocate had ample time to file evidence to support the reasons for the delay in making application to dispute the notice to end tenancy and failed to do so. NM stated that he intended to file evidence to support his application for more time, in time for the hearing scheduled for October 16, 2017.

In addition, I find the landlord credible when he testified that he had served the notice of hearing package on the tenant on July 14, 2017 in person. In any event, I find that NM was notified of this hearing on August 01, 2017.

Regardless of whether the landlord has filed an application for an order of possession, the onus is on the tenant to dispute the notice in a timely manner.

Pursuant to section 47 (5) of the *Residential Tenancy Act*, if a tenant has received a notice to end tenancy for cause and does not make an application for dispute resolution within ten days after receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

Based on the testimony of both parties, I find that the tenant did not make application within ten days after receiving the notice to end tenancy and has not proven that he had extenuating circumstances that prevented him from doing so.

Therefore, the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective by 1:00 pm on October 31, 2017. The Order may be filed in the Supreme Court for enforcement.

Since the landlord's application has been granted, I award the landlord the recovery of the filing fee of \$100.00.

### **Conclusion**

I grant the landlord an order of possession effective by 1:00 pm on October 31, 2017.

I grant the landlord a monetary order in the amount of \$100.00.

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: August 17, 2017

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Residential Tenancy Branch