



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROSE APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: OPB FF

### **Introduction:**

Both parties attended and gave sworn testimony. The landlord testified she received the Notice to End Tenancy dated May 31, 2017 on May 31, 2017 and she served their Application for Dispute Resolution by registered mail. The tenant served his Application dated June 16, 2017 late and the landlord received it. I find that the parties were legally served with the documents according to sections 88 and 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 44 (1) (c) and 55 as the tenant has breached a term of the their Notice to End Tenancy not vacating as agreed; and
- b) An order to recover the filing fee pursuant to Section 72.

The tenant applies to cancel his co-tenant's Notice to End Tenancy.

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

Is the landlord entitled to an Order of Possession and filing fee?

Or is the tenant entitled to any relief?

### **Background and Evidence:**

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that R.B.'s tenancy commenced about 14 years ago in this building and the tenancy in the subject unit commenced March 25, 2009. In evidence is a tenancy agreement dated March 25, 2009 between the landlord and the tenant, M.C., who was R.B.'s girlfriend, R.B. was noted as an occupant. Rent is noted as \$975 a month and \$487.50 as security deposit. On August 1, 2011, an Amendment was made noting M.C. ended her tenancy on July 31, 2011

and R.B. was the sole occupant/tenant as of August 1, 2011. M.C. forfeited her portion of the security deposit to R.B.'s account. On August 1, 2015, An Amendment was made to further amend the original tenancy agreement to state that R.B. and T.H. are now the sole occupants and tenants of the subject unit and the damage deposit would be held in their name. Both R.B. and T. H. signed the agreement on September 1, 2015.

On May 31, 2017, T.H. put a Notice to End Tenancy in the manager's mail slot and she said she received it the same day. He agreed to let R.B. keep his portion of the security deposit. The manager sent a letter to R.B. dated May 31, 2017 stating that T.H.'s Notice to End Tenancy had ended the tenancy for both tenants (as co-tenants) on the effective date of June 30, 2017 and requesting R.B. to remove his goods and vacate the unit accordingly.

The tenant R.B. filed his Application on June 16, 2017 which is late. He maintains that he did not know his co-tenant's Notice to End Tenancy would apply to his tenancy also and did not know this until he received an email from the landlord on June 6, 2016 informing him of this. I accept his explanation and extend his time to dispute the Notice as I find he had a girlfriend move out in the past and his tenancy continued so I find he had some reason to believe his co-tenant's Notice would not affect his tenancy.

The tenant was anxious to continue his tenancy and made many submissions which I heard. Some of them are noted. He said

- the purpose of the Act is to ensure security of tenancy,
- precedents were set in 2009 and 2015 when amendments were made to the contract
- based on the precedents and common law, he believes the landlord waived her right to end the tenancy based on a co-tenant's notice as he is willing to continue paying the rent and wants to continue his tenancy;
- he believes the landlord is acting in bad faith as the rent is below market value
- the landlord instructed T.H. how to word the Notice so she could end his, R.B.'s, tenancy based on Notice of a co-tenant and it was incumbent on her to advise him of the significance of his Notice affecting his co-tenant.

The landlord said

- that T. H. approached her with his Notice to End Tenancy and she instructed him to put the address and signature on it as legally required;
- that T.H. and R.B. both signed the amendment, they are co-tenants and it is a contract;
- In 2011, an amendment was also done when R.B.'s girlfriend left.

- the landlord agreed to the amendments at the time for rent was being paid on time and other matters were okay;
- In 2017, when T.H. gave his Notice to End Tenancy, the landlord did not want to agree to an amendment to continue tenancy with R.B. for various reasons such as NSF cheques, rent being late and him informing her in June 2017 that he did not have a job.

The tenant wanted to dispute all the landlord's points regarding rent and his attitudes. However he did agree he had had some NSF cheques but was only late 3 times in 9 years of tenancy. He said he has an on call teaching position now and is willing to address rent concerns by putting money in escrow or getting a co-signer. Regarding his mannerisms, he agreed he did dispute a rose bush being cut down and had belongings in the common area but only when he was spring cleaning. He wanted to further argue principles of common law but the hearing time was ended as I deemed it irrelevant at that point. The parties negotiated a move-out date. The landlord agreed to an effective date of September 15, 2017 for the Order of Possession.

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

### **Analysis**

#### **Order of Possession**

I find that the landlord is entitled to an Order of Possession. I find the co-tenant, T.H., gave a Notice to End tenancy dated May 31, 2017. I find the landlord's evidence credible that she did not manipulate or coerce the co-tenant but merely advised him that he had to include the address of the unit and his signature to make it legal. I find the tenant, T.H., legally ended the tenancy in accordance with section 45 of the Act.

Residential Policy Guideline 13 provides:

*Where co-tenants have entered into a periodic tenancy, and one tenant moves out, that tenant may be held responsible for any debt or damages relating to the tenancy until the tenancy agreement has been legally ended. If the tenant who moves out gives proper notice to end the tenancy the tenancy agreement will end on the effective date of that notice, and all tenants must move out, even where the notice has not been signed by all tenants.*

Although the tenant R.B. contended waiver at common law should apply as the landlord had previously added or subtracted tenants as one moved out. I find the principle of waiver does not apply in this case because the landlord was careful to abide by section 14 (2) of the Act and provide an amendment signed by all the parties in each instance of

a tenancy change. There is no evidence that the landlord overlooked the change in tenants or waived her rights and allowed it to continue without a signed amendment by her and the tenants. In the present case, the landlord does not agree to an amendment and gave some reasons for her reservations. I find it irrelevant to discuss her reservations and the tenant's contentions to them as I find she does not have to justify refusing to amend the tenancy agreement under section 14(2) of the Act.

I find the tenancy is at an end. Since T.H. ended his tenancy legally effective June 30, 2017, I find he is not liable for any rent debt after that date. An Order of Possession is issued effective September 15, 2017 as agreed by the landlord in light of the length of the tenancy. The Order of Possession will be effective against R.B. as he is the only tenant remaining in the unit.

**Conclusion:**

I find the landlord is entitled to an Order of Possession against R.B. effective September 15, 2017. I find the landlord is entitled to recover filing fees paid for this application.

**I HEREBY ORDER that the landlord may deduct \$100 from the tenant's security deposit to recover the filing fee.**

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