



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC

### Introduction

This hearing was scheduled for 9:30 a.m. on today's date, via teleconference call, to hear a tenant's application to dispute a 1 Month Notice to End Tenancy for Cause dated June 13, 2017. The tenant subsequently submitted an Amendment seeking to dispute a 10 Day Notice to End Tenancy for Unpaid Rent dated August 2, 2017 on the basis she had also received a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 29, 2017 and had the right to withhold rent for August 2017 due to the 2 Month Notice.

The owner of the property appeared at the hearing but the tenant did not despite leaving the teleconference call open until 9:49 a.m. The landlord confirmed that the tenant served her original Application for Dispute Resolution upon the property management company that was acting as the landlord's agent at that time and the tenant served the landlord with her amendment.

The owner requested that the tenant's Application for Dispute Resolution be amended to name her as the landlord in this matter since the property manager resigned effective July 4, 2017. I noted that the 10 Day Notice identifies the owner of the property as the landlord and I have amended the application accordingly.

The landlord testified that the tenant appears to be in the process of moving out today but requested that an Order of Possession be provided to her.

The landlord further stated that it is imperative that I make a determination as to which Notice to End Tenancy ends the tenancy as she wants to know if she is entitled to rent for August 2017 and whether she remains bound to fulfill the reason for ending the tenancy as stated on the 2 Month Notice. I stated that it was possible that she may be held to fulfill the reason stated on the 2 Month Notice but I urged the landlord to seek

independent legal advice on that matter. The landlord did not appear satisfied by my response and continued to argue that what I stated is inconsistent with the “advice” she was provided by the Residential Tenancy Branch staff and Residential Tenancy Branch Policy Guideline 11. Nevertheless, she repeatedly insisted that I make a determination on that matter and hear the evidence with respect to the issuance of the 1 Month Notice. I declined to do so for the following reasons.

As provided under section 58 of the Act, I am bound to resolve the Application for Dispute Resolution that is before me. Since the tenant failed to appear at the hearing I dismissed the tenant’s application. Having dismissed a tenant’s application to cancel a Notice or Notices to End Tenancy, the relevant matter to determine is whether the landlord is entitled to an Order of Possession and the effective date of the Order of Possession based as required under section 55 of the Act.

Upon review of the Notice(s) to End Tenancy I was satisfied the landlord is entitled to an Order of Possession and I informed the landlord that I would provide one effective two (2) days after service upon the tenant since an Order cannot be effective retroactively and the tenancy ends no later than today regardless of which Notice ended the tenancy. I asked the landlord had any other questions regarding the Order of Possession that I would be issuing to which she continued to argue that I make a determination on which Notice to End Tenancy ended the tenancy. I informed the landlord that unless she had any questions regarding the Order of Possession I would be ending the call. The landlord continued to argue and in the absence of any further questions regarding the Order of Possession I ended the telephone call.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession pursuant to section 55(1) of the Act and if so what effective date should be reflected in the Order?

#### Background and Evidence

Three Notices to End Tenancy were presented to me as evidence:

- a 1 Month Notice to End Tenancy for Cause dated June 13, 2017 with a stated effective date of July 15, 2017;
- a 2 Month Notice to End Tenancy for Landlord's Use of Property dated June 29, 2017 with a stated effective date of August 31, 2017; and,

- a 10 Day notice to End Tenancy for Unpaid Rent dated August 2, 2017 with a stated effective date of August 12, 2017 indicating the tenant failed to pay rent that was due on August 1, 2017.

The tenancy agreement provided as evidence provides that rent is payable on the first day of the month.

All of the Notices to End Tenancy are in the approved form and appear to be duly completed although the 1 Month Notice appears to have an incorrect effective date and should read July 31, 2017 since rent is payable on the first day of the month.

The tenant filed to dispute the 1 Month Notice to End Tenancy and the 10 Day Notice within the applicable time limits. The tenant did not file to dispute the 2 Month Notice within the time limit for doing so and indicated in the written submission that accompanied the Amendment that she had accepted the end of the tenancy pursuant to the 2 Month Notice and withheld rent for August 2017 because of the 2 Month Notice. During the hearing the landlord stated that she wanted to “accept” that the tenant filed to dispute the 2 Month Notice.

### Analysis

Section 55 of the Act provides as follows:

**55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The tenant's application to cancel Notices to End Tenancy has been dismissed due to the tenant's failure to appear at the hearing. The Notices to End Tenancy before me appear to meet the form and content requirements of the Act and I am satisfied that all of the criteria for providing the landlord an Order of Possession under section 55(1) have been met. Therefore, I find the landlord entitled to an Order of Possession.

As for the effective date of the Order of Possession, it is important to note that a tenant cannot be ordered to return possession of a rental unit retroactively. Given the date of this proceeding, I find that it is appropriate to provide the landlord with an Order of Possession effective two (2) days after service upon the tenant regardless as to whether the tenancy ended or ends on July 31, 2017 pursuant to the 1 Month Notice; August 12, 2017 pursuant to the 10 Day Notice; or, August 31, 2017 pursuant to the 2 Month Notice. Therefore, I provide the landlord with an Order of Possession effective two (2) days after service.

### Conclusion

The tenant's application was dismissed. The landlord is provided an Order of Possession effective two (2) days after service upon the tenant.

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 31, 2017

---

Residential Tenancy Branch