



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPC, MNR, MNDC

### Introduction

This hearing convened as a result of a Landlords' Application for Dispute Resolution filed July 17, 2017 wherein the Landlords requested an Order of Possession. By Amendment filed July 31, 2017 the Landlords indicated they wished to pursue an Order of Possession based on cause, and a Monetary Order for unpaid rent in the amount of \$8,200.00.

The hearing was conducted by teleconference on October 5, 2017. Only the Landlord, P.S.P., called into the hearing (hereinafter referred to as the "Landlord"). He gave affirmed testimony and was provided the opportunity to present the Landlords' evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified that he personally served the Tenant with the Notice of Hearing and the Original Application on July 28, 2017. P.S.P. stated that on August 2, 2017 he served the Amendment to an Application for Dispute Resolution by posting it on the rental unit door.

### **Special rules for certain documents**

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].
- (2) An application by a landlord under section 55 [*order of possession for the landlord*], 56 [*application for order ending tenancy early*] or 56.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:
- (a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

(3) A notice under section 94.21 [*notice of administrative penalty*] must be given in a manner referred to in subsection (1).

Pursuant to sections 89(2)(d) and 90 I find the Tenant was duly served with the Landlord's application for an Order of Possession as of July 31, 2017 (3 days after posting to the rental unit door) and I proceeded with the hearing of the Landlord's request for an Order of Possession in their absence.

Section 89(1) of the *Act* provides that a Tenant must be personally served or served by registered mail when the application relates to monetary compensation. As only the Amendment deals with monetary compensation and that document was served by posting to the door, I find the Tenant was not properly served the amendment *as it relates to the Landlords' monetary claim*. **Accordingly, I dismiss with leave to reapply the Landlords' monetary claim.**

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, not all details of the Landlords' submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue to be Decided

Is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Landlord testified that the tenancy began in 2002; he confirmed that they purchased the rental property in November of 2016 with the existing tenancy. A new tenancy agreement was entered into by the parties and was provided in evidence. The Landlord testified that monthly rent was payable in the amount of \$1,500.00 per month payable on the 1<sup>st</sup> of the month. (Notably, the agreement provides the amount as \$1,550.00. As the Landlords' monetary claim has been dismissed with leave to reapply I need not determine at this time which amount is correct.)

The Landlord testified that on June 14, 2017 he posted a One Month Notice to End Tenancy for Cause on the rental unit door. The reasons cited on the Notice were as follows:

- Tenant is repeatedly late paying rent.
- Tenant has allowed an unreasonable number of occupants in the unit/site.

The Notice informed the Tenant he had 10 days in which to apply to dispute the Notice.

The Landlord confirmed that the Tenant failed to apply to dispute the Notice.

### Analysis

Based on the Landlords' undisputed testimony and documentary evidence, and on the balance of probabilities, I find the following.

The Tenant did not apply to dispute the Notice and is conclusively presumed, pursuant to section 47(5) to accept the end of the tenancy and must vacate the rental unit. The Landlord is entitled to an Order of Possession pursuant to section 55 of the *Act* which will be effective at **1:00 p.m.**, two days after service. This Order must be served on the Tenant and may be filed in the Supreme Court and enforced as an Order of that court.

### Conclusion

The Landlords are entitled to an Order of Possession. The Landlords' monetary claims are dismissed with leave to reapply.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 5, 2017

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Residential Tenancy Branch