



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC CNC CNR OPR MNR MNSD FF

### **Introduction:**

Both parties attended and gave sworn testimony. The tenant agreed they received a One Month Notice to end Tenancy for cause dated July 10, 2017 to be effective August 31, 2017. The landlord said he subsequently served a 10 Day Notice to End Tenancy dated September 8, 2017 to be effective September 18, 2017 by posting it on the door because the tenant did not vacate as agreed. The landlord said they served the Application for Dispute Resolution personally. The tenant gave evidence that they personally served their Application to dispute both Notices and the landlord agreed he 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 46 or 47, and 55 for unpaid rent or cause;
- b) A Monetary Order for unpaid rent pursuant to sections 46 and 67;
- c) To retain the security deposit to offset the amount owing; and
- d) An order to recover the filing fee pursuant to Section 72.

The tenant applies pursuant to the Act for orders as follows:

- e) To cancel Notices to End Tenancy for unpaid rent and cause.

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

Has the landlord proved on the balance of probabilities that there is good cause to end this tenancy and obtain an Order of Possession based on either the section 46 or 47 Notice? Are they entitled to recover the 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. This was a highly emotional hearing and the parties had to be

constantly reminded to not interrupt each other. The undisputed evidence is that the tenancy commenced November 1, 2016, a security deposit of \$500.00 was paid and rent is currently \$1000.00 a month. It is undisputed that the tenant owes \$1000.00 rent for each of September, October and November 2017. The tenant explained that he had agreed to vacate after receiving the One Month Notice to End Tenancy but he was then incarcerated due to a breach of probation and did not have time to find another place.

Both parties agreed to the next sequence of events. The tenant's rent is paid directly by the Ministry and the landlord returned the \$1000 rent cheque to the Ministry because he believed the tenant was vacating at the end of August. When the tenant did not vacate, the landlord served the 10 Day Notice which the tenant disputed in time. The tenant states the Ministry is holding the three month's rent until the landlord signs a Shelter Form which would authorize them to pay the rent. The landlord says he does not want to continue the tenancy as he had already issued a One Month Notice to End Tenancy for cause.

The landlord maintains the tenancy should end under section 47 of the Act for the tenant is significantly interfering with and unreasonably disturbing his family and neighbours. He said neighbours are continually complaining and knocking on his door because the Police have gone to the tenant's home more than 6 times. The Police have instructed the landlord to telephone them if he sees the wife of the tenant outside as she is under an arrest warrant. The tenant agreed the Police have been there a few times but says it is only for probation violations for both himself and his wife. He said his recent incarceration was for missing a probation appointment. The landlord said the tenant has persons knocking at his door in the early hours and he lets them in. One of the persons had a stolen car which was verified as stolen by the Police. The landlord provided Police file numbers and names as support for his credibility.

The tenant said he and his wife's visits from the Police are related to probation violations and probation time is almost expired. The probation was due to shop lifting charges a few years ago. He disagrees that he is doing anything wrong and states if the landlord would just sign the shelter form, he could have his rent paid and all would be fine.

The landlord states he wants an Order of Possession but agrees to an effective date of November 30, 2017 to allow the tenant time to move. The landlord also requests a monetary order for \$3,000 for outstanding rent. The tenant agreed that this amount was owed to the end of November 2017.

In evidence are both Notices to End Tenancy and statements from the parties,

On the basis of the documentary and 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. There is outstanding rent. I find the tenant made an Application in time to dispute this Notice. However, he did not make his Application in time to dispute the One Month Notice to End Tenancy for cause. The Notice was dated July 10, 2017 and he did not make his Application until September 13, 2017. The time to do so (10 days after receipt of the Notice) had expired. In these situations, the Residential Tenancy Act provides that the tenant has been deemed to have accepted the end of the tenancy on the date set out in the Notice.

Furthermore, I find causes to end a tenancy are set out in section 47 and any one of these, if proven, is sufficient to end the tenancy. I find the landlord's evidence most credible that the tenant or a person permitted on the property by the tenant is significantly interfering with, and unreasonably disturbing neighbours and the landlord's family. Although the tenant excused and minimized the Police visits because they were due to probation violations, I find it most likely that a number of visits by Police with arrests is significantly interfering and unreasonably disturbing neighbours and the landlord. I find there is good cause to end the tenancy. I find the landlord entitled to an Order of Possession effective November 30, 2017 as he agreed.

**Monetary Order**

I find that there are rental arrears in the amount of \$3000.00 representing rental arrears from September to November 2017. Whether or not the Ministry has the funds, I find the Act does not compel a landlord to sign a shelter agreement for a tenant whose tenancy he has ended for cause. I find the landlord entitled to a monetary order for \$3,000 plus filing fee and to retain the security deposit to offset the amount owing.

**Conclusion:**

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

Calculation of Monetary Award:

Rent arrears and over holding rent to November 30, 2017	3000.00
Filing fee	100.00
Less security deposit	-500.00
<b>Total Monetary Order to Landlord</b>	<b>2600.00</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: November 08, 2017

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Residential Tenancy Branch