



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIRST UNITED CHURCH SOCIAL HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR, CNR, OLC, MT, FF

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession and for the recovery of the filing fee. The tenant applied to cancel the notice to end tenancy for non-payment of rent and for additional time to do so. The tenant also applied for an order directing the landlord to comply with the *Act* and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the landlord entitled to an order of possession or should the notice to end tenancy be set aside? Is the tenant entitled to the remedies that he has applied for?

### **Background and Evidence**

The tenancy started on October 01, 2002. The accommodation is subsidised housing and is allotted and rented based on a tenant's income and family size. The tenant's portion of the rent is \$597.00.

The landlord stated that the tenant had outstanding arrears from December 2014 in the amount of \$721.00. The tenant agreed. The parties came up with a payment plan for the tenant to an extra \$16.00 per month. The landlord stated that the tenant failed to pay this extra amount regularly and was also short on rent for certain months. The landlord continued to work with the tenant with regard to paying the outstanding rent. The tenant stopped paying the extra \$16.00 per month in October.

The parties met and the tenant stated that he would not be paying because he believed that the arrears were fully paid out except for \$14.00. The landlord stated that the arrears were \$183.00 and served the tenant with a ten day notice to end tenancy. The landlord cancelled the notice on condition the tenant continued to pay towards the rental arrears. The tenant refused to pay and on January 03, 2018, the landlord served the tenant with a second 10 day notice to end tenancy for unpaid rent in the amount of \$183.00.

The tenant agreed that he received the notice on January 03, 2018 and stated that he was unable to make application for dispute resolution because he suffered from a mental and psychological condition and because he did not have the \$100.00 filing fee. The tenant stated that he finally paid the fee by credit card and made application to dispute the notice on line, on January 10, 2018. The tenant also stated that he did not know how to scan his evidence into the system which was another reason for the delay. The tenant did not visit the Residential Tenancy Branch Office for assistance.

The landlord stated that they are in the business of providing subsidized housing for vulnerable people with medical issues and therefore eviction is the last resort. After having given the tenant several years to pay the outstanding arrears, the landlord decided to make application for an order of possession. However the landlord attempted to give the tenant one more opportunity to continue making the payments before he filed the application for dispute resolution.

A female member of the administrative staff approached the tenant at the rental unit to ask him if he intended to continue with his installment payments and explained that the landlord intended to file an application for an order of possession if the tenant was not going to. The landlord stated that the tenant got extremely angry and was verbally abusive towards the landlord's staff member and she needed counselling.

The tenant agreed that he was verbally abusive towards the female staff member and then went to the landlord's office and was aggressive towards the landlord. The landlord stated that the tenant destroyed property in the office and then stole a plastic owl from the office. The tenant agreed to the landlord's description of the events that took place inside the office. The tenant stated that the reason he took the owl is that it is for the purpose of scaring pigeons away and should not have been placed inside the landlord's office.

The tenant complained that the landlord does not provide rent receipts for payments by cheque and also has not posted the working hours of the office. The landlord agreed.

## **Analysis**

Based on the sworn testimony and documentary evidence of both parties, I find that the tenant received the notice, on January 03, 2018. The notice was served in the two page format which clearly notifies the tenant about the 5 day time frame within which to dispute the notice. Since the tenant is deemed to have received the notice on January 03, 2018, and applied to dispute the notice on January 10, 2018, I find that the tenant has not made application to dispute the notice within the legislated time frame.

The tenant has applied for additional time to make the application. Under section 66(1) of the Act, an extension of time can ***only*** be granted where the applicant has established that there are ***exceptional circumstances*** (Sec. 66).

In this matter, the word *exceptional* implies that the reason(s) for failing to make application to dispute the notice to end tenancy in the time required are very strong and compelling. On reflection of the reasons of insufficient funds and a mental condition, advanced by the tenant, I find that the tenant has failed to prove that *exceptional circumstances* prevented him from filing to dispute the notice to end tenancy within the legislated time limit and accordingly I dismiss his application for additional time to dispute the notice to end tenancy.

Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute 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.

The tenant received the notice to end tenancy for unpaid rent, on January 03, 2018 and did not pay rent within five days of receiving the notice to end tenancy and the time to do so has expired. Even if I grant the tenant additional time to make application, the tenant also failed to pay the outstanding rent and as of the date of this hearing still owed the landlord. The tenant disputed the amount owed and stated that he owed \$14.00 and not \$183.00 as claimed by the landlord.

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. Pursuant to section 55(2), I am issuing a formal order of possession effective by 1:00pm on April 13, 2018. The order may be filed in the Supreme Court for enforcement.

Since the landlord has proven his claim I award the landlord the recovery of the filing fee of \$100.00. The landlord may retain this amount from the security deposit.

The tenant has applied for an order directing the landlord to post office hours and to provide receipts. Since the landlord agreed that the hours are not posted and that he does not provide receipts for cheque payments, I order the landlord to do so starting immediately.

Since the tenant has proven a portion of his case, I award him the recovery of his filing fee of \$100.00. The tenant may make a one-time deduction of \$100.00 from a future rent.

### **Conclusion**

- I grant the landlord an order of possession effective by 1:00pm on April 13, 2018.
- The landlord may retain \$100.00 from the security deposit.
- The tenant may make a one-time deduction of \$100.00 from a future rent.
- The landlord must post working office hours and must provide receipts for all rental payments.

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: March 09, 2018

---

Residential Tenancy Branch