



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL MNRL OPC

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause; a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. However, the line remained open while the phone system was monitored for 15 minutes prior to hearing any testimony and no one for the tenant joined the call. The landlord's agent testified that the tenant was served with the Application for Dispute Resolution and notice of this hearing (the Hearing Package) on June 7, 2018 personally by the landlord named in this application, and a proof of service document signed by that person and a witness has been provided as evidence for this hearing. I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

The tenant has provided 5 notes from physicians stating that the tenant is in poor health and requires consistent 22 degree heat. One of the 5 letters states, as a postscript, that the tenant is unwell and unable to attend arbitration until a new home is found. Another indicates that the tenant cannot attend for the hearing in July 2018, and "You will be notified of any improvements is her status." It is not addressed to anyone or dated. No information has been provided about when the tenant may be able to join the hearing. The landlord's agent opposed the adjournment stating that there have been 3 previous hearings wherein the tenant did not join the conference calls. Given that there are no indications of when the tenant might be able to join the hearing, and considering Rules 7.8 and 7.9 of the Residential Tenancy Branch Rules of Procedure, I found that it would be prejudicial to the landlord to adjourn the hearing, and the hearing commenced in the absence of the tenant.

During the course of the hearing the landlord's agent testified that there are currently no rental arrears, and the landlord withdraws the application for a monetary order for unpaid rent or utilities.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

The landlord's agent testified that this tenancy began on July 15, 2014 and is currently on a month-to-month basis, and the tenant still resides in the rental unit. Rent in the amount of \$1,009.00 per month is currently payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord collected a security deposit at the beginning of the tenancy which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite in a complex containing 32 rental units, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on April 23, 2018 the tenant was personally served with a One Month Notice to End Tenancy for Cause, a copy of which has been provided for this hearing. It is dated April 23, 2018 and contains an effective date of vacancy of May 31, 2018. It was served by the landlord, and a copy of a Proof of Service document has been provided as evidence for this hearing. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - put the landlord's property at significant risk.

The landlord's agent testified to the following sequence of events:

- February 1, 2016 a hearing was scheduled and then re-scheduled to March 8, 2016 respecting a notice to end the tenancy given by the landlord, and the tenant didn't attend; an Order of Possession was granted effective March 31, 2016.
- May 13, 2016 the tenant sent a letter to the landlord stating that she found a place to move to but it wasn't available until July 15, 2016. The landlord replied that Use of Occupancy only would be provided until July 31, 2016.

- July 18, 2016 the tenant wrote to the landlord again saying she can't move due to a car accident so landlord agreed to extend the use and occupancy to the end of August, 2016.
- August 16, 2016 the landlord received a message from the tenant saying her son was there to help move.
- August 18, 2016 the tenant sent the landlord a message stating that the move-out condition inspection could be done on August 31.
- The landlord received a letter from a doctor on August 23, 2016 saying the tenant couldn't relocate.
- September 1, 2016 the landlord obtained an undertaking stating that the tenant would vacate the rental unit on September 30, 2016.
- At the end of September, the tenant sent a message to the landlord saying she had a place for October 15 and agreed to do the inspection on October 15. When the building manager arrived, the tenant was on the phone so he returned later, and the tenant had not packed anything.
- October 30, 2016 the tenant wrote a letter to the landlord saying she would be re-locating the next day.
- November 11, 2016 a neighbouring tenant advised that water was running down the wall. The building manager inspected and found the tenant cleaning up water and told the building manager that she fell asleep leaving the water running in the kitchen sink.
- November 15, 2016 the landlord received a note from a doctor asking the tenant remain in the rental unit for another 2 weeks. The following day, the landlord agreed on the condition that the tenant pay for the damage cause. The tenant never paid for the damages.
- January 16, 2017 the building manager was told that water was running again and found water everywhere in the suite. The tenant had again left the tap running.
- March 15, 2017 another neighbouring tenant told the building manager that water was running again and again the tenant left a tap running and fell asleep.
- April 19, 2017 again water was left running and the tenant refused to allow the building manager into the rental unit, and the fire department and police attended. The landlord has tried to contact the tenant's daughters but neither of them has returned the calls.
- April 23, 2018 the tenant was served with the One Month Notice to End Tenancy for Cause.

The landlord's agent further testified that the tenant has not served the landlord with an Application for Dispute Resolution disputing the notice to end the tenancy and seeks an Order of Possession and recover of the \$100.00 filing fee.

### Analysis

The *Residential Tenancy Act* states that if a tenant fails to dispute a One Month Notice to End Tenancy for Cause (the Notice) within 10 days of service, or deemed service, the tenant is conclusively presumed to have accepted the end of the tenancy.

In this case, the landlord's agent testified that the Notice was personally served to the tenant by the landlord on April 23, 2018 and a Proof of Service document has been provided for this hearing. I accept that evidence. The landlord's agent also testified that the landlord has not been served with an Application for Dispute Resolution by the tenant disputing the One Month Notice to End Tenancy for Cause, and I have no such application before me.

I have reviewed the Notice, and I find that it is in the approved form and contains information required by the *Act*. Since the tenant has not disputed the Notice, the landlord is entitled under the *Act* to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in that amount in favour of the landlord, and I order that the landlord may keep \$100.00 of the security deposit as recovery, or may otherwise recover it.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the landlord may keep \$100.00 of the security deposit or may otherwise recover it.

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: July 25, 2018

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Residential Tenancy Branch