



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OPRM-DR, FFL

### Introduction

This matter was the subject of an *ex parte* Direct Request Proceeding on August 08, 2018, pursuant to section 55(4) of the *Residential Tenancy Act* (the “*Act*”), and dealt with an Application for Dispute Resolution in which the Landlord applied for an Order of Possession and a monetary Order for Unpaid Rent.

At the conclusion of the proceedings the Residential Tenancy Branch Adjudicator granted the Landlord a Monetary Order and an Order of Possession that named both Tenants.

The Tenant with the initials “T.W.”, (hereinafter referred to as T.W.) filed an Application for Review Consideration. On September 10, 2018 a Residential Tenancy Branch Arbitrator granted a review on a limited basis to determine if T.W. was properly served with the Application for Dispute Resolution and to determine if T.W. was still a tenant in June and July of 2018.

In his review consideration decision the Arbitrator ordered the Landlord to serve T.W. with the Application for Dispute Resolution and the evidence the Landlord submitted with that Application. At this hearing the Agent for the Landlord stated that these documents were served to T.W. sometime in September. T.W. acknowledged receiving these documents and I am satisfied that they have now been served to her in accordance with section 89 of the *Residential Tenancy Act (Act)*. As these documents have now been served to her, the evidence was accepted as evidence for these proceedings.

In his review consideration decision the Arbitrator ordered T.W. to serve the Landlord with the reconsideration decision and the documents associated to that decision. At this hearing T.W. stated that these documents were served to the Landlord on September 14, 2018.

On September 21, 2018 T.W. submitted one page of evidence and some Canada Post documentation. She stated that the one page of evidence was served to the Landlord with the reconsideration decision. The Agent for the Landlord denied receiving this evidence.

I am unable to accept the 1 page of evidence T.W. submitted on September 21, 2018 as the Agent for the Landlord did not acknowledge receiving this evidence. T.W. was given the opportunity to discuss this evidence at the hearing, which was an email from her co-tenant. As the content of this email is not particularly relevant to my decision, I determined that it was not necessary to adjourn the hearing to provide T.W. with the opportunity to re-serve that evidence.

On September 21, 2018 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Agent for the Landlord stated that this evidence was served to T.W., via regular mail, on September 21, 2018.

T.W. acknowledged receiving two pages of evidence on September 25, 2018, both of which were emails previously exchanged by the parties. As T.W. acknowledged receiving this evidence it was accepted as evidence for these proceedings. Although this evidence was not received one week prior to the hearing, I accepted the evidence as the emails were previously exchanged by the parties and T.W. is fully aware of the content of the emails.

I am unable to accept the 3 pages of evidence the Landlord submitted on September 21, 2018 as T.W. did not acknowledge receiving this evidence. The Landlord was given the opportunity to discuss this evidence at the hearing, which were a series of emails. As T.W. did not dispute the content of the emails I determined that it was not necessary to adjourn the hearing to provide the Landlord with the opportunity to re-serve that evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. The parties were advised of their legal obligation to speak the truth during these proceedings.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent or utilities?

#### Background and Evidence

The Agent for the Landlord and T.W. agree that:

- this tenancy began on September 01, 2017;
- there was a written tenancy agreement that names both Respondents;
- the tenancy agreement was for a fixed term, the fixed term of which ended on August 31, 2018;
- the tenancy agreement required the Tenants to pay monthly rent of \$1,700.00 by the first day of each month;
- on May 31, 2018 T.W. sent an email to the Agent for the Landlord, in which she asked to be removed from the tenancy agreement;

- in the email of May 31, 2018 T.W. informed the Landlord that the other Respondent would be staying on as the sole occupant and would be responsible for paying costs associated to the tenancy;
- the Agent for the Landlord responded to the email of May 31, 2018, in which he informed T.W. that they were waiting for confirmation from the other Respondent regarding his intent to “stay on in this capacity”;
- on June 15, 2018 the other Respondent confirmed, via email, that he would be staying in the rental unit and that T.W. had vacated the rental unit;
- the Landlord did not provide the Tenants with anything, in writing, that specifically declares that T.W. has been removed from the tenancy agreement;
- on July 10, 2018 or July 11, 2018 the Agent for the Landlord personally told T.W. she had not been removed from the tenancy agreement.

The Agent for the Landlord stated that the male Tenant vacated the rental unit on July 31, 2018 or August 01, 2018. T.W. stated that she is not certain, but she thinks the male Tenant vacated the rental unit on July 31, 2018.

T.W. stated that if she understood she had not been removed from the lease she would have ended the tenancy and dealt with the consequences of those actions.

The Agent for the Landlord stated that on July 05, 2018 a Ten Day Notice to End Tenancy was served to each Tenant, by mailing them to the rental unit. T.W. stated that she did not receive this Notice, as she was not living in the rental unit on July 05, 2018.

The Agent for the Landlord stated that they did not agree to allow T.W. to remove herself from the tenancy agreement, in part, because they were concerned the male Tenant would be unable to pay the rent due to the fact he was unemployed.

The Agent for the Landlord stated that the rental unit has been vacated but that rent of \$3,400.00 is still in arrears for June and July of 2018.

### Analysis

On the basis of the undisputed evidence, I find that T.W. and a co-tenant entered into a fixed term tenancy agreement; that the fixed term of the tenancy agreement ended on August 31, 2018; and that the tenancy agreement required the Tenants to pay monthly rent of \$1,700.00 by the first day of each month.

Section 44(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 45, 46, 47, 48, 49, 49.1, and 50 of the *Act*.

The undisputed evidence is that the Landlord attempted to end this tenancy in July of 2018, pursuant to section 45 of the *Act*, by serving the Tenants with a Ten Day Notice to End Tenancy for Unpaid Rent.

Section 45(2) of the *Act* permits a tenant to end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As this was a fixed term tenancy, I find that the Tenants did not have the right to end this tenancy, in accordance with section 45(2) of the *Act*, prior to August 31, 2018. As Tenants did not have the right to end this tenancy prior to August 31, 2018, I find that this tenancy did not end prior to August 31, 2018 on the basis of section 44(1)(a) of the *Act*.

Section 44(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy. As there is no evidence that this fixed term tenancy agreement required the Tenants to vacate the rental unit at the end of the fixed term, I find that the tenancy did not end pursuant to section 44(1)(b) of the *Act*.

Section 44(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy.

In circumstances such as these, where one tenant wishes to end a fixed term tenancy agreement, the parties can mutually agree that one party be removed from the tenancy agreement and the remaining parties could then agree to continue the tenancy under the same terms.

On the basis of the undisputed evidence I find that on May 31, 2018 T.W. sent an email to the Agent for the Landlord, in which she asked to be removed from the tenancy agreement.

On the basis of the testimony of the Agent for the Landlord and in the absence of any evidence to the contrary, I find that the Landlord did not agree to remove T.W. from the tenancy agreement. Although it is clear, from the emails the parties exchanged, that the Landlord was considering the request, I cannot conclude that Landlord clearly conveyed its intent to remove T.W. from the agreement.

I find that the evidence does not establish that the Landlord agreed, in writing, to end their tenancy with T.W. I therefore find that T.W.'s tenancy did not end in accordance with section 44(1)(c) of the *Act*.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. The evidence shows that the male Tenant remained in the rental unit until the end of July 31 2018 or August 01, 2018. I therefore find that the tenancy had ended by August 01, 2018, pursuant to section 44(1)(d) of the *Act*, when the male Tenant vacated the rental unit.

Section 44(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 44(1)(e) of the *Act*.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. On August 08, 2018 a Residential Tenancy Branch Adjudicator granted the Landlord an Order of Possession that was effective two days after it was served to the Tenants. As the tenancy had already ended by the date this Order was granted, I find that this tenancy did not end in accordance with section 44(1)(f) of the *Act*.

When two tenants jointly enter into a tenancy agreement they are considered to be jointly and severally liable. This means that the tenants are jointly responsible for complying with the terms of the tenancy agreement and that a claim can be made against both, or only one, of the tenants. It is up to the tenants to determine how much each party owes.

As the Landlord did not agree to remove T.W. from the tenancy agreement, I find that she remained jointly and severally liable for the tenancy. As the tenancy did not end until the male Tenant vacated the rental unit, I find that T.W. remained obligated to pay rent for June and July of 2018. I therefore can find no reason to alter the Adjudicators decision to grant the Landlord a monetary Order for \$3,500.00, which names both T.W. and her co-tenant. T.W. retains the right to seek compensation from her co-tenant for rent that accrued after June 01, 2018.

On the basis of the testimony of the Agent for the Landlord and the absence of evidence to the contrary, I find that on July 05, 2018 a Ten Day Notice to End Tenancy was served to each Tenant, by mailing them to the rental unit. On the basis of the undisputed evidence I find that T.W. was no longer living in the rental unit on July 05, 2018, and that she did not receive that Notice.

As the Landlord served the male Tenant with a Ten Day Notice to End Tenancy and rent was not paid when it was due, I find that the Landlord had the right to end the tenancy pursuant to section 46 of the *Act*. As the Landlord had the right to end the tenancy, I can find no reason to alter the Adjudicators decision to grant the Landlord an Order of Possession.

### Conclusion

T.W. has failed to establish that the Adjudicators decision to grant the Landlord an Order of Possession and a monetary Order should be altered or set aside.

The original Order of Possession and Monetary Order granted on August 08, 2018 remain in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 28, 2018

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Residential Tenancy Branch