



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFL OPR OPRM-DR

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and 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 and the tenant attended the hearing and the landlord was accompanied by a support person who did not testify or take part in the hearing.

During the course of the hearing the tenant advised that he has vacated the rental unit and the key has been given to the landlord's realtor. The landlord was not aware of that, and the tenant is not opposed to the landlord receiving an Order of Possession effective immediately, and I so order.

The parties each gave affirmed testimony and were given the opportunity to question each other. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on July 1, 2015 and is not sure if or when the tenant has vacated the rental unit. Rent in the amount of \$1,400.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

\$700.00 as well as a pet damage deposit in the amount of \$400.00, both of which are still held in trust by the landlord.

The tenant failed to pay rent in July, 2018 and the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It consists of 2 pages of the form approved in 2006, dated July 3, 2018 and containing an effective date of vacancy of July 13, 2018 for unpaid rent in the amount of \$1,400.00 that was due on July 1, 2018 and \$1,400.00 unpaid utilities after receiving written demand on July 3, 2018. The landlord's lawyer said it was not sufficient, and the landlord contacted the Residential Tenancy Branch who advised that another notice be served.

The landlord served a newer version of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and a copy of the first page only of the 2-page form has been provided as evidence for this hearing. It is dated July 3, 2018 and contains an effective date of vacancy of July 13, 2018 for unpaid rent in the amount of \$1,400.00 that was due on July 1, 2018. The landlord testified that both pages were served on the tenant. The tenant has not served the landlord with an Application for Dispute Resolution disputing the Notice.

The landlord further testified that a Two Month Notice to End Tenancy for Landlord's Use of Property was also served on the tenant, and the first page only has been provided as evidence for this hearing. It is dated April 25, 2018 and contains an effective date of vacancy of July 1, 2018. The landlord testified that it was issued for unpaid rent, however the landlord's lawyer said it was not valid because the landlord didn't specify how much free rent the landlord would give the tenant. The landlord didn't understand, and called the Residential Tenancy Branch.

The landlord also testified that the tenant took down a chain link fence on the rental property and put up another fence. The landlord had agreed to pay the tenant \$400.00 but has since changed her mind.

**The tenant** testified that he only received the first page of the Two Month Notice to End Tenancy for Landlord's Use of Property, and then several 10 Day Notices to End Tenancy for Unpaid Rent or Utilities.

The landlord told the tenant that she wanted her granddaughter to move in and parties had a verbal agreement after the first Notice was given, that the tenant would vacate within the first 2 weeks of September, 2018. The parties also agreed that the landlord

would serve another Two Month Notice to End Tenancy for Landlord's Use of Property, and the 2 months would be July and August, but the landlord didn't do so. The tenant felt he was to get August's rent for free. The tenant moved out the first week of September, and agrees that the landlord should keep the \$700.00 security deposit and \$400.00 pet damage deposit to cover \$1,100.00 of the rent for July.

The parties also agreed that the landlord would pay the tenant \$400.00 for the new fence the tenant erected, and the tenant testified that the old fence was rusty and not in good condition. The landlord has not honoured that agreement, and the tenant feels it should be offset from the balance of the rent owed for July, and the tenant doesn't owe the landlord anything.

### Analysis

It is not clear to me what the landlord had in mind when issuing the Two Month Notice to End Tenancy for Landlord's Use of Property, but it is very clear to me that the landlord is either very confused or unfamiliar with the rules around ending a tenancy. The landlord testified that it was issued for unpaid rent, and the tenant testified that the landlord told the tenant that the landlord's granddaughter was going to move into the rental unit. The landlord also testified that her lawyer advised that the Notice was not valid, and I agree. Firstly, it is not in the approved form because it does not have page 2 attached to it. Where a landlord ends a tenancy, the landlord must use the approved form. A landlord may end a tenancy for landlord's use if the landlord's close family member (mother, father or child) intends in good faith to occupy the rental unit. That does not include a granddaughter. Further, when issuing a notice to end the tenancy for landlord's use of property, the landlord must provide the tenant with the equivalent of one month's rent, which is usually accomplished by not charging rent for the last month of the tenancy. Having found that it is not valid, and the parties agree the landlord did not issue another valid Two Month Notice to End Tenancy for Landlord's Use of Property, the tenant is not entitled to compensation equivalent to one month's rent.

The parties agree that a verbal agreement exists with respect to replacing the fence. I find that the landlord has changed her mind about that because she's annoyed with the tenant, not because the parties didn't make the agreement.

With respect to September's rent, the tenant testified that he vacated the rental unit during the first week of September, but the landlord testified that he was still there yesterday. Any notice that the tenant could legally have given the landlord should have been provided to the landlord prior to the end of August and would be effective at the

end of August because rent is payable on the 1<sup>st</sup> day of each month. By failing to give sufficient written notice, the tenant is obligated to pay rent to the end of September, 2018.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

In the circumstances, I find that the landlord is owed rent for the months of July, August and September, 2018 totalling \$4,200.00, less the cost of the fence of \$400.00. The tenant has agreed that the landlord should keep the \$700.00 security deposit and the \$400.00 pet damage deposit, and I so order. I grant a monetary order in favour of the landlord for the difference totalling \$2,800.00. ( $\$4,200.00 - \$400.00 = \$3,800.00 + \$100.00 = \$3,900.00 - \$700.00 - \$400.00 = \$2,800.00$ )

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective immediately.

I further order the landlord to keep the \$700.00 security deposit and the \$400.00 pet damage deposit and I 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 \$2,800.00.

This order is final and binding and may be enforced.

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: September 13, 2018

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Residential Tenancy Branch