



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** OPC FFL

### **Introduction:**

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 10 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. on September 4, 2018. The landlord attended the hearing and was given a full opportunity through her interpreter and representative to be heard, to present sworn or affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord/tenant and I were the only ones who had called into this teleconference.

The Notice to End Tenancy is dated December May 31, 2018 to be effective June 30, 2018 and the landlord stated it was served by posting it on the tenant's door. The effective date on the Notice is automatically corrected to July 31, 2018 pursuant to section 53 of the *Residential Tenancy Act* as a one month Notice to End Tenancy for cause must give a full month's notice and according to section 47(2) (b) end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement. The landlord stated the Application for Dispute Resolution was served by registered mail and the tenant told her he had received it. She was unable to find the tracking number. I find the documents were legally served pursuant to sections 88 and 89 for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To obtain an Order of Possession for cause pursuant to section 47; and
- b) To recover the filing fee for this application.

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

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 47 and they are entitled to an Order of Possession? Is the landlord entitled to recover the filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in September 2011, it is now a month to month tenancy, rent is \$590 a month and no security deposit was paid.

The landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) The tenant or a person permitted on the property by them
  - (i) has significantly interfered with and unreasonably disturbed another occupant or the landlord;
  - (ii) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord; and
  - (iii) Has engaged in illegal activity that has or is likely to damage the landlord's property; and
  - (iv) Adversely affects the quiet enjoyment, health, safety or lawful right of another occupant or the landlord.

The landlord described the situation. She lives upstairs in the home and rents the basement apartment to two individuals of whom the tenant was one. The tenants share a kitchen and a bathroom downstairs. Through her interpreter she said this tenant's behaviour is making it impossible for others in the home to have any peace and enjoyment. Although he signed a lease (in evidence) prohibiting smoking and drinking, he smokes and drinks to excess. His behaviour has led to police visits almost weekly and to an ambulance being needed due to him falling when drunk. She said she gave him hand written Notices to End Tenancy but he just laughed so she found out the correct legal procedure and is pursuing it now. Her other long term tenant who was there almost 20 years finally had to leave because he could not manage the constant interruptions to his sleep with the tenant's noise and the police and ambulance visits as he had to work. The landlord fears the tenant's smoking in bed may cause damage and a safety risk to the property. The tenant has also become incontinent and is causing hygiene problems with washroom cleanliness and the laundry. She said he owed her rent for July and has also damaged the unit.

The landlord said the tenant's social worker said they could not place him yet but the landlord found a friend that offered to tolerate his behaviour. However, it was in another area of the city and the tenant did not accept it.

**Analysis:**

Section 47 of the Act provides a landlord may end a tenancy if there is sufficient cause. Causes, any one of which may be a sufficient reason, are listed in that section. I find section 47(4) states a tenant has 10 days to dispute the Notice to End Tenancy. If they do not file an application to dispute within this time, I find section 47(5) provides they are conclusively presumed to have accepted the end of the tenancy on the date set out on the notice and must vacate the rental unit by that date. I find the tenant received the Notice on May 31, 2018 and has never disputed it. Pursuant to section 47(5), I find his tenancy ended on July 31, 2018 (as corrected) and the landlord is entitled to an Order of Possession. Pursuant to her enquiry, I advised the landlord that if there are damages or unpaid rent, she may bring an Application for compensation.

Furthermore, I find the weight of the evidence is that the tenant signed a lease agreeing not to smoke and drink on the premises. I find he violated the lease terms and his behaviour:

- (i) has significantly interfered with and unreasonably disturbed another occupant or the landlord;
- (ii) has seriously jeopardized the health, safety or lawful right of another occupant or the landlord; and
- (iii) Has engaged in illegal activity that has or is likely to damage the landlord's property; and
- (iv) Adversely affects the quiet enjoyment, health, safety or lawful right of another occupant or the landlord.

**Conclusion:**

I find the landlord entitled to an Order of Possession effective two days from service and to recover the filing fee for this application.

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 04, 2018

---

Residential Tenancy Branch