



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KEKULI INVESTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR, CNR, OLC, MT, ERP, LAT, 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 a monetary order for unpaid rent 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 carry out repairs. The tenant applied for authorization to change the locks.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented herself. The landlord was represented by their agent. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of the other's application for dispute resolution and evidence. I find that evidence was served to both parties in accordance with sections 88 and 89 of the *Act*.

### **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 she has applied for?

### **Background and Evidence**

The tenancy started on August 01, 2018. The monthly rent is \$625.00 payable on the first of the month. Prior to moving in the tenant paid a security deposit of \$312.50. The tenant stated that Social Services pays a portion of her rent directly to the landlord. The landlord stated that the tenant failed to pay rent that was due on October 01, 2018. The tenant stated that she offered to pay rent but the landlord would not accept it.

The landlord testified that on October 02, 2018, he went to the rental unit to serve the tenant with a ten day notice to end tenancy and the tenant opened the door but refused to accept the notice. The landlord posted the notice on the front door.

The tenant stated that she was incarcerated from October 04 to October 13, 2018 and therefore was unable to dispute the notice in a timely manner. The tenant agreed that as of the date of the hearing she owed rent for the months of October and November 2018. The tenant complained that the rental unit is infested with rats and worms and the landlord does not take care of the problem.

### **Analysis**

Based on the sworn testimony and documentary evidence of both parties, I find that the tenant is deemed to have received the notice, on October 05, 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 October 05, 2018, and applied to dispute the notice on October 13, 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, advanced by the tenant, I find that the tenant has proven that *exceptional circumstances* prevented her from filing to dispute the notice to end tenancy within the legislated time limit and accordingly I allow her 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 October 05, 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 though 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 agreed that she owed a total of \$1,250.00 in unpaid rent for the months of October and November 2018.

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 two days after service on the tenant. . 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 has established a total claim of \$1,350.00 which includes \$1,250.00 for unpaid rent plus \$100.00 for the filing fee. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord agreed to allow the tenancy to continue until 1:00pm on November 30, 2018, if the tenant paid her portion of rent on this day – November 19, 2018. Since the tenancy is ending, the remainder of the tenant's application is moot and accordingly dismissed.

### **Conclusion**

I grant the landlord an order of possession effective two days after service on the tenant and a monetary order in the amount of \$1,250.00.

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: November 19, 2018

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Residential Tenancy Branch