



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *OPC, OPL, MNDC, FF*

### **Introduction**

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession pursuant to notices to end tenancy – for cause and for landlord's use of property. The landlord also applied for a monetary order to recover unpaid rent and the filing fee.

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. Both parties represented themselves along with their agents.

As both parties were in attendance I confirmed service of documents. The tenant stated that he had not received the landlord's notice of hearing package and only found out about this hearing scheduled for this date (November 09, 2018), when he visited the Residential Tenancy Branch Office on November 07, 2018.

The tenant stated that on October 01, 2018, he had made an application for dispute resolution and a hearing was scheduled for this date. On November 07, 2018 the tenant visited the office for the purpose of cancelling the hearing that was scheduled to address his application. The tenant stated that it was during this visit that he found out that the landlord had also made application and the landlord's application was scheduled to be heard along with the tenant's application on this date of November 09, 2018. At the start of the hearing, the tenant requested an adjournment of the proceedings to provide him with additional time to respond to the landlord's application for dispute resolution.

The tenant also stated that he had not received the notices to end tenancy for cause and for landlord's use of property which are the subject of this hearing. The landlord stated that she had served the tenant with two notices to end tenancy on July 25, 2018 and had also served the tenant with the notice of this hearing on October 18, 2018 by Canada Express Post. The landlord filed copies of the tracking slips along with tracking information. The tracking numbers are recorded on the previous page of this decision.

The tracking history confirms that the packages were delivered on July 27, 2018 and October 19, 2018 respectively. I find that the tenant was served with the landlord's materials in accordance with sections 88 and 89 of the *Act*.

*Residential Tenancy Branch, Rules of Procedure*, Rule 6.4 sets out the criteria for granting an adjournment:

Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:

- (a) the oral or written submissions of the parties;
- (b) whether the purpose for which the adjournment is sought will contribute to the objectives set out in Rule 1;
- (c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
- (d) the degree to which the need for the adjournment arises out the intentional actions or neglect of the party seeking the adjournment; and
- (e) the possible prejudice to each party.

Rule 6 of the Residential Tenancy Branch Rules of Procedure state that the "Residential Tenancy Branch will reschedule a dispute resolution proceeding if written consent from both the applicant and the respondent is received by the Residential Tenancy Branch before noon at least 3 business days before the scheduled date for the dispute resolution hearing". Based on the audit notes on the electronic file, I find that the tenant did contact the Residential Tenancy Branch office on November 06, 2018. The notes do not mention a request from the tenant for information on how to go about applying for an adjournment.

Although I considered all the criteria in 6.4, I declined to adjourn the hearing as I have determined that the landlord has proven service of the notices to end tenancy and the notice of hearing on the tenant. I further find that an adjournment would possibly prejudice the landlord by subjecting her to further delay of the proceedings when she claims she needs the unit to house a close family member. Accordingly, I informed the tenant at the hearing that I would not adjourn the hearing and that the hearing would continue as scheduled.

The landlord has filed an application to enforce a monetary order in the amount of \$4,550.00 that was awarded to her by an Arbitrator at a previous hearing. The landlord has been informed that enforcement of a monetary order is under the jurisdiction of the Small Claims Court.

### **Issues to be decided**

Did the landlord serve a valid notice to end tenancy? Does the landlord have cause to end the tenancy? Did the tenant apply to dispute the notice?

### **Background and Evidence**

The parties agreed that the tenancy started on October 01, 2016. A copy of the written tenancy agreement was filed into evidence. The monthly rent is \$1,500.00 due in advance on the first day of each month. Prior to moving in the tenant paid a security deposit of \$750.00.

On July 25, 2018 the landlord served the tenant with two notices to end tenancy by Canada Express Post to the address of the rental unit. The landlord filed copies of the tracking slip and the tracking history. The tracking history indicates that the notices were delivered to the tenant on July 27, 2018. The tenant stated that she had photographs that will prove service to the tenant but these photographs were not filed into evidence.

A copy of the notice to end tenancy for cause was filed into evidence. It is dated July 24, 2018 with an effective date of August 31, 2018. The notice is a two page notice. The reasons for the notice are that the tenant has an unreasonable number of occupants in the rental unit and that the tenant has breached a term of the tenancy agreement.

The two month notice to end tenancy is for landlord's use of property. A copy of the notice was filed into evidence. The notice is a two page notice, is dated July 24, 2018 and has an effective date of September 30, 2018. The reason for the notice is that the rental unit will be occupied by the landlord or a close family member of the landlord.

The tenant stated that he did not receive either notice and therefore did not make application to dispute the notices. Since the tenant did not make application for dispute resolution to dispute the notices to end tenancy and did not move out on the effective date of the notice, on October 12, 2018, the landlord applied for an order of possession.

### **Analysis**

Pursuant to section 47 (5) of the *Residential Tenancy Act*, if a tenant has received a notice to end tenancy for cause and does not make an application for dispute resolution within ten days after receiving 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.

Based on the testimony of both parties and the documentary evidence of the landlord, I find that the tenant is deemed to have been served with a valid two page notice to end tenancy for cause on July 30, 2018. The tenant is also deemed to have been served with a valid two month notice to end tenancy on that same day. The tenant did not dispute the notices to end tenancy.

The tenant stated that he did not dispute the notices to end tenancy because he was not served with the notices to end tenancy. The tenant also stated that Canada Express post was not an acceptable method of service. Based on the testimony and evidence of the landlord, I am satisfied find that the tenant was served with the notices to end tenancy in accordance with sections 88 and 89 of the *Act*. Even if I accept the tenant's position that service was not in accordance with the *Act*, which I do not, I invoke section 71(2)(C) that states that the director may make an order that a document not served in accordance with section 88 or 89 is sufficiently given or served for purposes of the *Act*.

Since the tenant did not make application to dispute the notices to end tenancy, I find that the landlord is entitled to an order of possession. The tenant has paid rent for the month of November. Pursuant to section 55(2); I am issuing a formal order of possession effective by 1:00 pm on November 30, 2018. The Order may be filed in the Supreme Court for enforcement.

Since the landlord's application has been granted, I award the landlord the recovery of the filing fee.

### **Conclusion**

I grant the landlord an order of possession effective by 1:00 pm on November 30, 2018. The landlord may retain \$100.00 from the security deposit towards the recovery of the filing fee.

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 15, 2018

---

Residential Tenancy Branch