



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: OPC FF

### **Introduction:**

Both parties attended the hearing (the landlord by an agent representative) and gave sworn testimony. The landlord's agent (hereinafter called 'the landlord') said they personally served on February 28, 2019 the One Month Notice to end Tenancy for cause dated February 28, 2019 to be effective March 31, 2019. They said they also served the Application for Dispute Resolution personally. The tenant said the landlord did not serve the Notice to End Tenancy on February 28, 2019; she got it later. She agreed she received the landlord's Application as stated. I find that the tenant was legally served with the documents according to section 89 of the Act. Furthermore, I find she was served with the Notice to End Tenancy personally on February 28, 2019 as I prefer the evidence of the landlord who attended her premises with a witness, S.O., who saw the documents served on February 28, 2019. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order of Possession pursuant to Sections 47, and 55 for cause; and
- b) An order to recover the filing fee pursuant to Section 72.

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

Is the landlord entitled to an Order of Possession and to recover the filing fee?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced on November 1, 2014, a security deposit of \$325 was paid and rent is currently \$650 a month. The landlord testified they served the Notice to End Tenancy pursuant to section 47 of the Act for the following reasons:

- 1. The tenant has allowed an unreasonable number of occupants in the unit/site;
- 2. The tenant or a person permitted on the property by the tenant has
  - (a) Significantly interfered with or unreasonably disturbed another occupant or the landlord;

- (b) Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - (c) Put the landlord's property at significant risk.
3. The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
- (d) damage the landlord's property;
  - (e) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
  - (f) Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord provided a letter and sworn testimony that the tenant has a constant stream of people engaged in drug activity coming to her unit day and night. He supplied pictures taken during a two hour period on April 11 and April 12, 2019 showing many different persons coming to the tenant's door. One picture was of vomit in the laundry room, allegedly caused by one of the tenant's visitors. He said that during the past week, the police have been there 5 times. All the tenants are complaining to him about the noise, the traffic and the illegal activity. The landlord conceded the tenant had been a good tenant since 2014 but during the past 6 months, there has been drug dealing from her unit. The police informed the landlord that they arrested two heroine addicts who were dealing from the tenant's unit. The tenant has been maced twice and her window broken. The police are threatening to classify this property as a 'nuisance property' due to this behaviour.

The tenant said the landlord's statements are all lies. She said she did not file an Application to dispute the landlord's Application because she was sick and stressed by behaviour of other tenants. She said no one was arrested in her apartment; she said her girlfriend was 'hyper' and she had to call the police about her two years ago. She said she does not use the laundry room, it is gross and one tenant keeps sending people over to her apartment to harass her day and night. She alleges this has happened since a couple moved in who wanted her unit for a daughter and accused her of being a hooker. She said she got hit and hurt in a home invasion because one of the other tenants had her key. She claims she is alone and is not one of the bad tenants but the landlord does not protect her quiet enjoyment. She said someone strange smashed her window, the lady said her 'boyfriend' was in my house but he was not so that was nothing to do with her. There were some people coming and going but they came to a birthday party for her kids. She says she is 60 years old.

On the basis of the solemnly sworn and documentary evidence presented at the hearing, a decision has been reached.

**Analysis**

Section 47 (1) of the Act states: A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (c) there are an unreasonable number of occupants in a rental unit;*
- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
  - (iii) put the landlord's property at significant risk;**
- (e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i) has caused or is likely to cause damage to the landlord's property,*
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*
  - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;**

It further states in section 47 (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) must vacate the rental unit by that date.**

I find pursuant to section 47 as above that the tenant is conclusively presumed to have accepted that the tenancy ends on March 31, 2019, the effective date of the Notice.

Furthermore, I find section 66(1) of the Act states:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances...

Policy Guideline 36 clarifies 'exceptional circumstances:

*The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.*

*Some examples of what might **not** be considered "exceptional" circumstances include:*

*the party who applied late for arbitration was not feeling well*•

*the party did not know the applicable law or procedure*•

*the party was not paying attention to the correct procedure*

•

*Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:*

• *the party was in the hospital at all material times*

I find insufficient evidence that the tenant was prevented from filing a Dispute to the Notice by exceptional circumstances. She said she was sick with cancer and stressed by accusations of neighbours but provided insufficient evidence of medical or other reasons.

Furthermore, I find the weight of the evidence supports the landlord's reasons for ending the tenancy that is, in part,

*47(c) there are an unreasonable number of occupants in a rental unit;*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

*(iii) put the landlord's property at significant risk;*

I prefer the landlord's evidence as I found him to be straightforward with consistent evidence and to have documentary evidence to support his reasons for ending the

tenancy. The tenant was contentious and although she argued that the Notice to End Tenancy was not served on February 28 to her, I find the landlord's witness' signed statement supported his testimony on service. Although the tenant argued that this was a one time thing for a birthday party of her sons, I find this is not consistent with the photographs of the landlord and his testimony concerning the extended time of the disturbance and the police arrests.

In summary, I find that the landlord is entitled to an Order of Possession. The weight of *the evidence shows there is sufficient cause to end the tenancy pursuant to section 47* of the Act. An Order of Possession is issued effective May 10, 2019 as requested by the landlord.

**Conclusion:**

I find the landlord is entitled to an Order of Possession effective May 10, 2019 and to recover filing fees paid for this application.

**I HEREBY ORDER that the landlord may recover his filing fee of \$100 by withholding \$100 of the tenant's security deposit.**

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: April 30, 2019

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Residential Tenancy Branch