



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT

### Introduction

On December 5, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking an order of possession of the rental unit.

The matter was originally set for a conference call hearing on December 13, 2019. The Tenant appeared at the hearing; however, the Landlord did not. The Arbitrator accepted the testimony of the Tenant that the Landlord was served with notice of the hearing and the hearing proceeded. The Tenant was granted an order of possession for the rental unit effective two days after service on the Landlord.

On December 18, 2019, the Landlord applied for Review Consideration. The Landlord’s application was considered, and the Arbitrator accepted that the Landlord was unable to attend the original hearing because he may not have been served with notice. The Arbitrator ordered a new hearing and suspended the Decision and Orders issued on December 13, 2019. The Arbitrator ordered the Landlord to serve the Tenant with the notice of the new hearing.

The matter was set for a conference call hearing on February 4, 2020. The Landlord and Tenant attended the hearing. The Tenant attended nine minutes late and submitted that she was not properly served with the notice of hearing. She testified that she is not living at the address that she provided in her application for service of documents.

The Landlord testified that he served the Tenant with notice of the new hearing and his documentary evidence at the service address provided by the Tenant in the Notice. The Landlord provided a photograph of documents being posted to the Tenant’s door.

I find that the Landlord properly served the notice of hearing to the Tenant using the address she provided; and nevertheless, the Tenant was present at the hearing. The hearing proceeded.

The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue to be Decided

- Does the Tenant have a legal right to possess the rental unit and should the Tenant receive an order of possession?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on July 1, 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$2,250.00 was due to be paid to the Landlord by the first day of each month.

The Tenant is seeking an order of possession for the rental unit.

The Tenant testified that on November 1, 2019, she called the police to have her parents removed from the rental unit. She testified that the next day the police again attended the rental unit and they arrested the Tenant based on allegations of an assault on her son.

The Tenant testified that the Ministry of Children became involved and because the situation was volatile, they told her to stay in a hotel and not return to the rental unit for a few days.

The Tenant testified that on November 7, 2019 she returned to the rental unit and found that the locks had been changed. The Tenant spoke to her parents at the rental unit and the Tenant was informed that she was not permitted back into the unit and to speak to the police. The Tenant testified that she spoke to a parental guidance counsellor and

was informed that the Landlord would not permit her back into the rental unit. The Tenant testified that her possessions and dogs are still in the rental unit.

The Tenant submitted that it was an illegal end of tenancy. She testified that the Landlord had previously served her with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but she had paid the rent within five days. She testified that she never gave the Landlord a written notice to end tenancy, and the Landlord never obtained an order of possession for the rental unit.

In response, the Landlord testified that the Tenant gave him a notice saying that she would be moving out as soon as possible. The Landlord provided a copy of the notice. The Landlord testified that the Tenant vacated the rental unit at the end of October, so he entered into a new tenancy agreement on November 1, 2019 with the parents of the Tenant. The Landlord provided a copy of a tenancy agreement signed and dated November 1, 2019.

The Landlord testified that he never applied for an order of possession and never received an order of possession for the rental unit.

### Analysis

Section 44 of the Act provides that a tenancy ends only if one or more of the following applies:

*(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*

*(i) section 45 [tenant's notice];*

*(i. 1) section 45.1 [tenant's notice: family violence or long-term care];*

*(ii) section 46 [landlord's notice: non-payment of rent];*

*(iii) section 47 [landlord's notice: cause];*

*(iv) section 48 [landlord's notice: end of employment];*

*(v) section 49 [landlord's notice: landlord's use of property];*

*(vi) section 49.1 [landlord's notice: tenant ceases to qualify];*

*(vii) section 50 [tenant may end tenancy early];*

*(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;*

*(c) the landlord and tenant agree in writing to end the tenancy;*

*(d) the tenant vacates or abandons the rental unit;*

- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,*
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
  - (d.1) for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
- (e) when given by a landlord, be in the approved form.*

Section 55 (2)(b) of the Act provides that a landlord may request an order of possession of a rental unit in the following circumstance by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;*
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant did not end the tenancy by giving the Landlord a proper written notice to end tenancy. The Tenant's notice provides she would be moving out as soon as possible. The Tenants notice is not an effective notice as it does not provide an effective date of the notice.

I find that the Landlord did not apply for an order of possession for the rental unit based on his receipt of the notice to end tenancy that he received from the Tenant or based on a notice to end tenancy issued to the Tenant by the Landlord.

I find that the Landlord did not have any authority to decide that the Tenant had moved out of the rental unit after she was arrested by police on or about November 1, 2019.

I find that the tenancy had not ended in accordance with the Act, and the Landlord did not have the right to change the door locks and deny entry to the Tenant.

Since the tenancy had not ended on November 1, 2019, I find that the Landlord did not have the right to enter into a new tenancy agreement with the Tenant's parents.

While I am mindful that the tenancy had not ended, I have considered that the Landlord has entered into a new tenancy agreement for the rental unit. If the Tenant was granted an order of possession for the rental unit, the result would present additional consequences and harm as the new Tenants would be displaced. On this basis, the Tenant's request for an order of possession for the rental unit is denied.

I grant the Tenant leave to apply for compensation for damage or loss that resulted from the Landlord's breach of the Act with respect to how the tenancy ended.

I have also considered the Tenant's testimony that many of her possessions remain in the rental unit. While there was no testimony on whether or not the Landlord placed the Tenant's personal items into storage on the rental property or elsewhere, I find that the Landlord must permit the Tenant an opportunity to recover her possessions. I order the Landlord to provide generous access to the Tenant to recover her possessions.

### Conclusion

I find that the Landlord did not have the authority to evict the Tenant from the rental unit on November 1, 2019. The Tenant did not give proper notice to end the tenancy and the Landlord did not obtain an order of possession for the rental unit from the Residential Tenancy Branch.

Since there is a new tenancy in effect at the rental unit, I decline to grant the Tenant an order of possession for the rental unit. The Decision and Order of possession issued on December 13, 2019 are set aside/ cancelled.

The Tenant has leave to apply for compensation for any loss as a result of being illegally evicted from the rental unit.

I order the Landlord to provide generous access to the Tenant to recover her possessions.

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: February 05, 2020

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Residential Tenancy Branch