



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNRL -S, MNDL -S, MNDCL – S, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession for cause; a Monetary Order for unpaid rent, damage to the rental unit, damages or loss under the Act, regulations or tenancy agreement; and, authorization to retain the security deposit.

The landlord appeared at the hearing; however, there was no appearance on part of the tenants.

Since the tenants did not appear, I explored service of the hearing documents and evidence upon the tenants.

The landlord had identified two tenants in making this Application for Dispute Resolution; however, the landlord stated the female respondent has not occupied the rental unit for some time and he did not serve her with documents for this proceeding. The landlord stated that only the named male tenant remains at the rental unit and the male tenant was the only tenant served with notification of this proceeding. Accordingly, the female respondent was excluded as a named party to this dispute.

The landlord submitted that the proceeding package was sent to the tenant via registered mail on July 13, 2020 and successfully delivered on July 15, 2020. A registered mail receipt, including tracking number, and the tracking information was provided as proof of service. The registered mail was sent to the tenant at the rental unit address and the landlord confirmed that the tenant is still occupying the rental unit. I accepted that the tenant was duly served with the proceeding package in accordance with section 89 of the Act.

As for the landlord's evidence, the landlord submitted that all of the evidence was copied to a USB stick and the USB stick was sent to the tenant via registered mail on July 23, 2020 and successfully delivered on July 27, 2020. The landlord also testified that on July 27, 2020 he sent an email to the tenant to provide the tenant with the Digital Evidence Worksheets and informed the tenant that the USB stick contained the landlord's evidence for this proceeding. The landlord acknowledged that the tenant did not acknowledge receipt of the email or confirm to the landlord that he was able to view/hear the content on the USB stick.

With respect to the landlord's evidence on a USB stick, the Rules of Procedure provide certain obligations on a party serving materials on a digital device. The Rules of Procedure were developed in keeping with procedural fairness and the principles of natural justice. Rule 3.10.5, in particular, requires that a party serving digital evidence do the following:

*Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.*

On the digital evidence worksheet completed by the landlord, it states:

Confirmation that both parties can access evidence:	
NOTE: If you do not confirm that the other party is able to see and/or hear the evidence, your evidence might not be considered.	
	I have confirmed that the other party is able to see and /or hear the evidence on this digital device.
X	I will confirm before the hearing that the other party was able to see/hear the evidence on this digital device for at least seven full days.
<b>Important Information:</b>  For your digital evidence to be considered at a hearing, it must meet requirements set out in the Residential Tenancy Branch Rules of Procedure: <ul style="list-style-type: none"> <li>• Digital evidence may include (but not limited to) photographs, audio recordings, video recordings or electronic versions of printable documents in an accepted format.</li> <li>• You <b>must</b> provide a printed description of the digital device on this form.</li> <li>• You must ensure all evidence submitted is served to the other party. Before the hearing, you <b>must</b> confirm that the other party can gain access to the files.</li> </ul> NOTE: If there is a virus on the digital device, the evidence will not be considered. You should submit your digital evidence with the printed description as soon as possible.	

In this case, I find I am unsatisfied the landlord obtained the tenant's confirmation that the tenant could see/hear the evidence on the USB stick. I do not consider silence or a

non-response to constitute confirmation. Nor, was the tenant at the hearing to confirm he could see/hear the content on the USB stick. Therefore, I did not admit the landlord's evidence, with the exception of the 1 Month Notice to End Tenancy for Cause, for reasons explained below.

I did admit the 1 Month Notice to End Tenancy for Cause and I reviewed it because the proceeding package was served in paper form to the tenant on July 15, 2020 and it indicates the landlord is seeking an Order of Possession based on a 1 Month Notice to End Tenancy for Cause served on June 29, 2020; and, the tenant had filed to dispute a 1 Month Notice to End Tenancy for Cause served on June 29, 2020 in his own Application for Dispute Resolution (file number referenced on the cover page of this decision). Therefore, I am satisfied the tenant has a copy of the 1 Month Notice to End Tenancy for Cause served on June 29, 2020 and the tenant would not be prejudiced by me admitting the Notice into evidence and considering it in making my decision.

The Application for Dispute Resolution filed by the tenant was scheduled for July 31, 2020; however, there was no appearance on part of the tenant or the landlord. The landlord testified that he was unaware of a hearing on July 31, 2020 and the tenant had not served him with a Tenant's Application for Dispute Resolution. The Arbitrator presiding over the July 31, 2020 found the tenant's Application for Dispute Resolution to have been abandoned and dismissed it, but the Arbitrator did not issue an Order of Possession to the landlord.

In light of the above, I informed the landlord that I would proceed to consider his entitlement to an Order of Possession based on the 1 Month Notice to End Tenancy for Cause served on June 29, 2020 but that I would dismiss the landlord's monetary claim, with leave to reapply, for two reasons: 1) the evidence in support of the monetary claim was not admitted; and, 2) Rule 2.3 and Rule 6.2 of the Rules of Procedure provide me discretion to sever multiple issues contained in a single application, which I have done. Below, I have reproduced Rule 2.4 and 6.2:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

### **6.2 What will be considered at a dispute resolution hearing**

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application. The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a

party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.

#### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause?
2. Award of the filing fee.

#### Background and Evidence

The landlord submitted that the tenancy started on November 1, 2017 for a fixed term that expired on October 31, 2018. Upon expiration of the fixed term the tenancy continued on a month to month basis. The tenant paid a security deposit of \$1000.00 and the monthly rent was originally set at \$2000.00 but it increased over time to \$2100.00 payable on the first day of every month.

The landlord submitted that the tenant started damaging the rental unit and there were numerous complaints of excessive noise and as child throwing rocks from the balcony of the rental unit, on the 17<sup>th</sup> floor, among other things. On June 29, 2020 the landlord personally served the tenant with the subject 1 Month Notice to End Tenancy for Cause "1 Month Notice"). The 1 Month Notice has a stated effective date of July 29, 2020. The 1 Month Notice is in the approved form and is duly signed and completed.

The tenant filed to dispute the 1 Month Notice on July 2, 2020; however, the tenant did not appear for his hearing of July 31, 2020 and the Arbitrator concluded as follows:

"I dismiss the Application for Dispute Resolution with leave to reapply; however, this does not extend any applicable time limits under the legislation."

The tenant did not make another Application for Dispute Resolution to dispute the 1 Month Notice and continues to occupy the rental unit.

The landlord confirmed the tenancy has not been reinstated.

### Analysis

This Application for Dispute Resolution is being made under section 55(2)(b) of the Act. Section 55(2)(b) of the Act provides as follows:

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(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;

The 1 Month Notice before me is in the approved form and is duly completed. The effective date is incorrect and should read July 31, 2020; however, as provided under section 53 of the Act, an incorrect effective date automatically changes to comply and an incorrect effective date does not invalidate a Notice to End Tenancy. Therefore, I find the 1 Month Notice served by the landlord is a valid notice and is automatically changed to reflect an effective date of July 31, 2020.

Section 47(4) of the Act provides that a tenant has 10 days after receiving a 1 Month Notice to dispute it by filing an Application for Dispute Resolution. Where a tenant fails to file an Application for Dispute Resolution to dispute a 1 Month Notice within the time limit for doing so, section 47(5) of the Act provides that the tenant is conclusively presumed to have accepted that the tenancy will end and the tenant will vacate the rental unit.

The tenant did file to dispute the 1 Month Notice but his application was dismissed, with leave; however, the tenant was not granted any additional time to file another dispute. Although extensions of time limits may be granted in “exceptional circumstances” under section 66 of the Act, an extension may not be given beyond the effective date of the 1 Month Notice, as provided under section 66(3) of the Act. Since the 1 Month Notice has an effective date of July 31, 2020 the tenant is not only out of time to dispute the 1 Month Notice under section 47 of the Act but an extension may not be given if the tenant were to attempt to dispute the 1 Month Notice after July 31, 2020. Therefore, I find the tenant’s right to file another Application for Dispute Resolution to dispute the 1 Month Notice has expired.

In light of the above, I find the tenancy ended on July 31, 2020 and the landlord is entitled to an Order of Possession under section 55(2) of the Act. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

I award the landlord recovery of the \$100.00 filing fee he paid for this Application for Dispute Resolution. Provided to the landlord is a Monetary Order in the amount of \$100.00.

### Conclusion

The landlord is provided an Order of Possession effective two (2) days after service. The landlord is provided a Monetary Order in the amount of \$100.00 for recovery of the filing fee.

The landlord's monetary claims against the tenant were severed from this Application for Dispute Resolution and dismissed with leave to reapply.

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: August 14, 2020

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Residential Tenancy Branch