



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      TT: CNC-MT, FFT  
                                 LL: OPC, OPM, FFL

### **Introduction**

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Tenant’s Application for Dispute Resolution was made on October 26, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- An order cancelling a One Month Notice for Cause dated September 17, 2020 (the “One Month Notice”);
- more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the One Month Notice; and
- an order granting the recovery of the filing fee.

The Landlord’s Application for Dispute Resolution was made on November 30, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on the One Month Notice;
- an order of possession based on a Mutual Agreement to End Tenancy dated October 1, 2020 (the “Mutual Agreement to End Tenancy”); and
- an order granting the recovery of the filing fee.

The Tenant and the Landlord’s Agents A.Y., and S.M. attended the hearing at the appointed date and time. The Tenant stated that she sent her Application to the Landlord by registered mail. The Landlord’s Agents stated that they did not receive the Tenant’s Application, however, wished to proceed with the hearing regardless. The Landlord’s Agents stated that they sent their Application and documentary evidence to

the Tenant. The Tenant confirmed receipt. As such, I find that above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

### Preliminary Matters

Throughout the hearing, the Tenant consistently interrupted the hearing despite several warnings to be patient and to wait her turn to testify or to respond to the Landlord's claims. The Tenant was argumentative and did not comply with requests to wait her turn to be heard.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to 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(s) to be Decided

1. Is the Tenant entitled to an order cancelling a One Month Notice, pursuant to Section 47 of the *Act*?
2. Is the Tenant entitled to more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the One Month Notice, pursuant to Section 66 of the *Act*?
3. Is the Tenant entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?
4. Is the Landlord entitled to an order of possession in relation to the One Month Notice, pursuant to Section 55 of the *Act*?
5. Is the Landlord entitled to an order of possession based on the Mutual Agreement to End Tenancy, pursuant to Section 55 of the *Act*?
6. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 15, 2019. Currently, rent in the amount of \$320.00 is due to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$391.00 which the Landlord currently holds.

The Landlord's Agents testified that the Landlord had served a One Month Notice to End Tenancy dated September 17, 2020 with an effective vacancy date of October 31, 2020. The Landlord's Agents stated that the Tenant had an Advocate that was helping the Tenant find suitable housing after receiving the One Month Notice. The Landlord's Agents stated that the parties agreed to extend the tenancy until November 30, 2020 to allow the Tenant more time to find another residence.

The Landlord's Agents stated that they prepared and signed the Mutual Agreement to End Tenancy dated October 1, 2020 and provided a copy to the Tenant's Advocate. The Mutual Agreement to End Tenancy has a move out date of November 30, 2020. The Tenant confirmed that she received the Mutual Agreement to End Tenancy. The Tenant confirmed that she signed the Mutual Agreement to End Tenancy, agreeing to move out of the rental unit on November 30, 2020. The Landlord provided a copy of the Mutual Agreement to End Tenancy in support.

The Tenant stated that her Advocate was not acting in her best interest and that the Tenant also signed an agreement to continue the tenancy. The Tenant did not provide any evidence in support of her agreement to continue the tenancy.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

According to Section 55 (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:

- (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;
- (c) 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.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.**

(3) The director may grant an order of possession before or after the date when a tenant is required to vacate a rental unit, and the order takes effect on the date specified in the order.

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

(a) grant an order of possession, and

(b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

In this case, I accept that both parties agreed that they signed the Mutual Agreement to End Tenancy with an effective date of November 30, 2020. While the Tenant stated that her Advocate was not acting in her best interest, I find that it is the Tenant's responsibility to read the Notice she is agreeing to prior to signing it. I find that the Mutual Agreement to End Tenancy clearly indicates that the parties are agreeing to end the tenancy on the effective date.

In relation to the Tenant's claim that she signed an agreement to continue the tenancy, I find that the Tenant did not provide any evidence to support this claim. As such, I find that the Landlord is entitled to an Order of Possession effective at 1:00 PM on January 31, 2021.

As the Landlord was successful with their Application, I find that they are entitled to recovering the \$100.00 filing fee paid to make the Application. Pursuant to section 67 and 72 of the *Act*, I find the Landlord is entitled to a monetary award in the amount of \$100.00 which may be deducted from the Tenant's security deposit currently being held by the Landlord.

As I have found that the Landlord is entitled to an Order of Possession based on the Mutual Agreement to End Tenancy, I find that I do not need to consider the validity of the One Month Notice to End Tenancy as it is now moot. In light of the above I dismiss the Tenant's Application without leave to reapply.

### Conclusion

The Tenant has breached the *Act* by not complying with the Mutual Agreement to End Tenancy. The Landlord is granted an order of possession effective at 1:00 PM on January 31, 2021, after service on the Tenant. The order should be served to the

Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord is entitled to the return of the filing fee and are permitted to deduct \$100.00 from 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: January 15, 2021

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Residential Tenancy Branch