



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Royal LePage Merritt Real Estate  
Services and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing dealt with The Landlord's Application for Dispute Resolution was made on January 28, 2021 (the "Landlord's Application"). The Landlord applied for the following relief, pursuant to the Residential Tenancy Act (the "Act"):

- an order of possession for cause; and
- an order granting the recovery of the filing fee.

The hearing was scheduled for 9:30 AM on April 26, 2021 as a teleconference hearing. K.D. appeared on behalf of the Landlord at the appointed date and time. No one appeared for the Tenant. The conference call line remained open and was monitored for 11 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that K.D. and I were the only persons who had called into this teleconference.

K.D. testified the Application and documentary evidence package was served to the Tenant by registered mail on January 29, 2021. A copy of the Canada Post registered mail receipt was submitted in support. Based on the oral and written submissions of the Applicants, and in accordance with sections 89 and 90 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on February 3, 2021, the fifth day after their registered mailing. The Tenant did not submit documentary evidence in response to the Application.

The Landlord's Agent was 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 Landlord entitled to an Order of Possession based on the One Month Notice for Cause dated September 18, 2020 (the “One Month Notice”), pursuant to Section 55 of the Act?
2. Is the Landlord entitled to the return of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The Landlord’s Agent stated that the Tenant was added to an ongoing tenancy on January 16, 2020. Currently, the Tenant is required to pay rent in the amount of \$436.75 which is due on the first day of each month. The Landlord currently holds a security deposit in the amount of \$250.00. The Landlord’s Agent stated that the Tenant continues to occupy the rental unit.

The Landlord’s Agent testified that he served the Tenant’s girlfriend in person with a One Month Notice on September 18, 2020 with an effective vacancy date of October 31, 2020. The Landlord’s Agent stated that the Tenant’s girlfriend is not a Tenant and does not reside with the Tenant. The Landlord’s reason for ending the tenancy on the One Month Notice is;

*“tenant or person permitted on the property by the tenant has; seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord’s property at significant risk”*

*“tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park”*

*“tenant has not done required repairs of damage to the unit/site”*

The Landlord’s Agent stated that the One Month Notice was served to the Tenant in relation to the clutter found in the Tenant’s yard. The Landlord’s Agent stated that the clutter is unsightly and that the Tenant has been warned several times to clean up the yard. The Landlord’s Agent provided pictures and a copy of the warning letters in

support. The Landlord's Agent stated that the Tenant has made some effort by removing the camper van from the yard, however, many items remain. The Landlord is seeking to end the tenancy as a result.

### Analysis

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

According to Section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause dated on September 18, 2020 with an effective vacancy date of October 31, 2020 by serving the Tenant's girlfriend who does not reside with the Tenant.

Section 88 of the Act stipulates that documents such as evidence must be given or served in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;**
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served; or
- (i) as ordered by an Arbitrator

In this case, I find that the Landlord's Agent served the Tenant's girlfriend in person who does not reside with the Tenant. As such, I find that the Tenant was not properly served in accordance with Section 88 of the *Act*.

Furthermore, the Landlord has submitted an Application for an Order of Possession based on a One Month Notice to End Tenancy, pursuant to Section 55 of the *Act*. I note that Section 55 of the *Act* states that in order for a Landlord to be granted an order of possession, the Landlord's notice to end tenancy must comply with Section 52 of the *Act* relating to form and content.

Section 52 of the *Act* States; 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.*

The One Month Notice contains a "Details of Cause" section which provides the Landlord and opportunity to outline the details surrounding the reason for Cause. This also provided the Tenant with an understanding as to why they are being served a Notice to End Tenancy. In this case, I find that the Landlord has not provided any information which would support the One Month Notice being served.

I find the One Month Notice does not comply with Section 52 of the *Act*. In light of the above, I cancel the One Month Notice, dated September 18, 2020. I order that the tenancy continue until ended in accordance with the *Act*.

As the Landlord was not successful in their Application, I find that they are not entitled to the recovery of the filing fee.

Conclusion

The Landlord did not serve the Tenant with the One Month Notice in accordance with Section 88 of the Act. Furthermore, the One Month Notice served by the Landlord does not meet the requirements of Section 52 of the Act. As such, the Landlord's Application is dismissed. The One Month Notice issued by the Landlord dated September 18, 2020 is cancelled. The tenancy will continue until ended in accordance with the *Act*.

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 26, 2021

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Residential Tenancy Branch