



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPN; OPC; FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- an order of possession for a tenant's notice to end tenancy pursuant s. 45
- an order of possession to end tenancy issued for cause pursuant to s. 47 and 55;
- authorization to recover the filing fee for this application from the tenant pursuant to s. 72.

The landlord's agent (the "landlord") provided testimony at the hearing. The tenant did not attend the hearing although I left the teleconference hearing connection open until the conclusion of the hearing to provide the tenant with an opportunity to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Property Manager and the Building Manager and I were the only ones who had called into this teleconference.

The landlord testified she sent, by registered mail, a copy of the Notice of Hearing along with supporting documentary evidence to the rental unit identified on the cover of this decision, on November 2, 2021. A Canada Post tracking number was provided. I find that the tenant was deemed served with this package on November 7, 2021, five days after the Property Manager mailed it, in accordance with s. 89 and 90 of the *Act*.

### **Issues to be Decided**

Are the landlords entitled to:

- 1) an order of possession pursuant to s. 47 and 55
- 2) recover the filing fee pursuant to 72

### **Background and Evidence**

The landlord testified that the Building Manager served the Tenant with a One Month Notice to End Tenancy for Cause (the "Notice") on August 27, 2021, at 2:25 p.m.

The Building Manager testified the tenant refused the notice and threw it on the ground and so the Notice was affixed to door. The service was witnessed by a third party. The proof of service document was not uploaded into evidence.

The Notice indicates several reasons for ending the tenancy including significant interference with or unreasonably disturbing another occupant; putting the landlord's property at risk; and a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord provided documentation of the various violations ranging from excessive noise and inappropriate behavior complaints to inappropriate access/egress of the rental unit. Included in the evidence package were multiple warning letters advising the tenant of the consequences of non-compliance.

The landlord is seeking an immediate order of possession.

### **Analysis**

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

Section 47 of the *Act* permits the landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute it by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy.

Based on the Landlord's testimony of the Proof of Service document, I am satisfied that the Tenant was served with the Notice, in person, on August 27, 2021. The Tenant had 10 days, until September 6, 2021, to dispute the notice but did not do so. Accordingly, pursuant to s. 47(5) of the *Act*, I find the Tenant is conclusively presumed to have accepted the end of the tenancy. The Landlord is entitled to an order of possession within two (2) days of service of this Order on or before 1:00 p.m.

The Landlord has requested recovery of the filing fee. The Residential Tenancy Agreement identifies a security deposit in the amount of \$612.00. In accordance with the offsetting provisions of s. 72, the landlord may retain \$100.00 of the security deposit in full satisfaction of the monetary order.

### **Conclusion**

Pursuant to s. 55 of the *Act*, I order that the tenant deliver vacant possession of the rental unit to the landlords within two days of being served with a copy of this decision and attached order(s) by the landlord by 1:00 pm.

As the landlord's application was successful, the Landlord is entitled to recover the \$100.00 filing fee for the cost of this application 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: November 26, 2021

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Residential Tenancy Branch