



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

On July 14, 2021, the Landlord submitted an Application for Dispute Resolution requesting an order of possession for the rental unit based on issuance of a One Month Notice to End Tenancy for Cause.

This matter was set for hearing by telephone conference call at 11:00 am on this date. The Landlord attended the conference call hearing; however, the Tenant did not.

The line remained open while the phone system was monitored for twelve minutes and the Tenant did not call into the hearing during this time. The Landlord provided affirmed testimony that she served the Notice of Dispute Resolution Proceeding to the Tenant by posting it to the tenant's door on July 27, 2021.

I find that the Tenant is deemed to have been served with notice of the hearing in accordance with sections 89 and 90 of the Act. The hearing proceeded.

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.

### Issues to be Decided

- Is the Landlord entitled to an order of possession for cause?
- Is the Landlord entitled to recover the cost of the filing fee?

### Background and Evidence

The Landlord testified that the tenancy began in June 2015 and is on a month-to-month basis. Rent in the amount of \$900.00 is to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$450.00 to the Landlord.

The Landlord testified that she issued the Tenant the One Month Notice to End Tenancy for Cause dated May 31, 2021 ("the One Month Notice") by posting it to the Tenant's door on May 31, 2021. The Landlord provided a proof of service document that indicates the One Month Notice was served to the Tenant on May 31, 2021.

The reasons selected by the Landlord within the One Month Notice are as follows:

*Tenant is repeatedly late paying rent.*

The One Month Notice provides information on the rights of a Tenant. At the top of the form the Notice provides: "*This is a legal notice that could lead to you being evicted from your home.*" The Notice also informs the Tenant of the right to dispute the Notice within 10 days after receiving it. The Notice informs the Tenant that if an application to dispute the Notice is not filed within 10 days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the effective date set out on page one of the Notice. The effective date within the Notice is May 31, 2021.

The Landlord testified that the Tenant has only paid the rent on time twice over the past 12 months. The Landlord testified that she has spoken to the Tenant on several occasions and reminded the Tenant of the need to pay the rent when it is due.

The Landlord stated that there was no agreement permitting the Tenant to pay the rent late. The Landlord provided copies of e-transfer money notifications showing the Tenant paid the rent late on six occasions in the past year.

The Landlord seeks an order of possession for the rental unit, based on an undisputed One Month Notice to End Tenancy for Cause dated May 31, 2021. The Landlord testified that November 2021, rent was received from the Tenant.

### Analysis

Based on the evidence before me, the testimony of the Landlord and on a balance of probabilities, I find that the Tenant received the One Month Notice to End Tenancy for Cause dated May 31, 2021.

The One Month Notice provided the Tenant with her rights of dispute. The Tenant failed to dispute the One Month Notice and the opportunity to dispute the Notice has expired.

I find that the Tenant is therefore conclusively presumed under section 47(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. The effective date of the One Month Notice automatically corrects to be July 31, 2021 which has now passed.

The Landlord provided sufficient evidence that the rent owing under the tenancy agreement has been paid late by the Tenant on six or more occasions.

Section 55 of the Act provides that a Landlord may request an order of possession of a rental unit when a notice to end tenancy is given by a Landlord and the Tenant has not disputed the Notice and the time for making that application has expired.

I find that the Landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective at 1:00 pm on November 30, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to pay the Landlord the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep \$100.00 from the security deposit of \$450.00 in full satisfaction of the filing fee.

### Conclusion

The Tenant received the One Month Notice and did not file to dispute the One Month Notice. The Tenant is presumed under the legislation to have accepted that the tenancy ended on the effective date of the Notice.

The Landlord is granted an order of possession effective at 1:00 pm on November 30, 2021, after service on the Tenant.

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 15, 2021

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Residential Tenancy Branch