



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PHS COMMUNITY SERVICES  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on March 08, 2022 (the “Application”). The Landlord applied for an Order of Possession based on a One Month Notice to End Tenancy for Cause dated May 07, 2021 (the “Notice”).

B.F. and S.H. (the “Agents”) appeared at the hearing as agents for the Landlord. The Tenant did not appear at the hearing. I explained the hearing process to the Agents. I told the Agents they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agents provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

B.F. testified that the hearing package and Landlord’s evidence were sent to the Tenant by registered mail to the rental unit March 15, 2022. B.F. provided Tracking Number 329. I looked Tracking Number 329 up on the Canada Post website which shows the package was unclaimed.

Based on the undisputed testimony of B.F. and Canada Post tracking information, I am satisfied the Tenant was served with the hearing package and Landlord’s evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the “Act”). The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the hearing package and Landlord’s evidence March 20, 2022. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

Given I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

### Background and Evidence

A written tenancy agreement was submitted. The tenancy started October 01, 2007.

The Notice was submitted. As stated, the Notice is dated May 07, 2021, and has an effective date of June 30, 2021.

B.F. testified that the Notice was sent to the Tenant at the rental unit by registered mail on May 07, 2021.

B.F. advised that a third-party has been paying the Tenant's rent and there is no outstanding rent at this point.

The Landlord had not issued the Tenant any kind of correspondence indicating that rent payments accepted after the effective date of the Notice were for use and occupancy only.

### Analysis

The Notice was issued pursuant to section 47 of the *Act*.

Section 55(2)(b) of the *Act* states:

(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...

However, RTB Policy Guideline 11 deals with waiver of notices to end tenancy and states in part:

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties.

I accept that the Notice was served on the Tenant May 07, 2021. The Landlord did not file the Application until March 08, 2022, ten months after the Notice was sent to the Tenant. I find the Landlord accepted rent payments for the Tenant after the effective date of the Notice. I find the Landlord did not communicate to the Tenant that the Landlord continued to seek to end the tenancy based on the Notice despite not seeking an Order of Possession and despite accepting rent payments each month.

I find the Landlord implicitly waived the Notice through their actions and neglect. I find the Landlord waived the Notice by accepting rent after the effective date of the Notice without indicating to the Tenant or third-party payor that rent was being accepted for use and occupancy only. More importantly, I find the Landlord waived the Notice by failing to take steps to enforce it until ten months after it was issued.

Given I find the Landlord waived the Notice, I decline to issue the Landlord an Order of Possession pursuant to section 55(2)(b) of the *Act*.

The Application is dismissed without leave to re-apply.

Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: June 21, 2022

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Residential Tenancy Branch