



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPT, FFT

### Introduction

On July 25, 2022, the Tenant applied for a Dispute Resolution proceeding seeking an Order of Possession pursuant to Section 54 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by email and by Xpresspost on July 27, 2022. The Landlord confirmed receiving this package by mail on July 27, 2022; however, she did not receive a copy of the tenancy agreement that was submitted by the Tenant. The Tenant confirmed that he forgot to include a copy of this tenancy agreement in his evidence package to the Landlord. Based on the undisputed testimony, I am satisfied that the Landlord was sufficiently served the Tenant’s Notice of Hearing and evidence package. As such, I have accepted the Tenant’s documentary evidence, and it will be considered, with the exception of the tenancy agreement, when rendering this Decision.

The Landlord advised that her evidence was served to the Tenant by domestic courier on August 4, 2022, and the Tenant confirmed that he received this evidence on August 5, 2022. As service of this evidence complies with the timeframe requirements of the Rules of Procedure with respect to an expedited hearing, I have accepted the Landlord’s evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the most current tenancy agreement started on February 1, 2021, that rent was established at \$6,000.00 per month, and that it was due on the first day of each month. A security deposit of \$3000.00 was also paid. A copy of the signed tenancy agreement was submitted, by the Landlord, as documentary evidence for consideration.

The parties also agreed that a One Month Notice to End Tenancy for Cause (the "Notice") was served to the Tenant by email on June 23, 2022. The Tenant disputed this Notice (the relevant file number is noted on the first page of this Decision), and while the Landlord claimed not to have received the Tenant's Notice of Hearing package for that dispute, she was provided with the October 18, 2022 date of the hearing. As well, she was informed that she could contact the Residential Tenancy Branch if she wanted to obtain details pertaining to that other dispute. She was also informed that the Arbitrator at that next hearing would make determinations on service of the Notice of Hearing package, and on the validity of the Notice.

With respect to issues pertinent to the Tenant's Application for an Order of Possession, he advised that he returned to the rental unit after the July 1, 2022 long weekend to find new tenants in the rental unit. He testified that he paid July 2022 rent to the Landlord on July 1, 2022 by e-transfer, and he referenced the documentary evidence submitted to support this position. However, he indicated that the Landlord refused to accept this payment. He then stated that the Landlord sent him a text on July 2, 2022 indicating that he had been served the Notice.

He testified that he had rented rooms of the rental unit to other people without the Landlord's written consent, and that he was contacted by one of them on June 30,

2022. Despite this person being an occupant/roommate of the Tenant, the Tenant was unsure if this person had signed a new tenancy agreement with the Landlord.

The Tenant confirmed that he still had access to the rental unit, that the Landlord has never prevented him from accessing the rental unit, and that this one occupant/roommate had then moved in other people into the rental unit.

He stated that he received an email from the Landlord on July 27, 2022 informing him that he must remove his property from the rental unit as of August 1, 2022. He confirmed that neither he, nor the other co-tenant on the tenancy agreement, ever provided any written notice to end the tenancy. As well, he testified that neither of them ever indicated that they have abandoned the rental unit. He stated that he paid August 2022 rent to the Landlord on August 1, 2022 by e-transfer, but the Landlord refused to accept this payment as well. In addition, he confirmed that rent has been paid in full for all of the months leading up to the hearing.

The Landlord advised that her downstairs tenants informed her that the Tenant and his co-tenant had vacated the rental unit. Rent for June 2022 had not yet been paid, and when she attempted to contact the Tenant and the co-tenant, there was no response. However, June 2022 rent did arrive, and she “assumed it was a final payment.”

She then testified that her property manager visited the rental unit and that it was empty, save for one apparent roommate/occupant of the Tenant. It is her position that the Tenant was illegally sub-letting the rental unit and that he had additional future plans to do so. Thus, the Notice was served.

She confirmed that she has neither changed the locks nor signed a new tenancy agreement with any other parties. She also confirmed that while the co-tenant informed her that he was leaving the rental unit, neither he nor the Tenant have provided any written notice to end the tenancy. As well, she acknowledged that the Tenant paid June 2022 rent, that July 2022 rent was paid in full on July 1, 2022, but she refused this, and that August 2022 rent was also paid in full on August 1, 2022, but she refused this as well.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 44 of the *Act* outlines all the ways in which a tenancy may end, and those are noted as follows:

**44** (1) *A tenancy ends only if one or more of the following applies:*

- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*
  - (i) section 45 [tenant's notice];*
  - (i.1) section 45.1 [tenant's notice: family violence or long-term care];*
  - (ii) section 46 [landlord's notice: non-payment of rent];*
  - (iii) section 47 [landlord's notice: cause];*
  - (iv) section 48 [landlord's notice: end of employment];*
  - (v) section 49 [landlord's notice: landlord's use of property];*
  - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
  - (vii) section 50 [tenant may end tenancy early];*
- (b) 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) the landlord and tenant agree in writing to end the tenancy;*
- (d) the tenant vacates or abandons the rental unit;*
- (e) the tenancy agreement is frustrated;*
- (f) the director orders that the tenancy is ended;*
- (g) the tenancy agreement is a sublease agreement.*

*(2) [Repealed 2003-81-37.]*

*(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.*

Section 54(1) and (2) of the Act states that a Tenant who has entered into a tenancy agreement with a Landlord may request an Order of Possession of the rental unit by making an Application for Dispute Resolution, and that the Director may grant an Order of Possession to a Tenant under this Section before or after the date on which the Tenant is entitled to occupy the rental unit under the tenancy agreement.

I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Moreover, given the contradictory testimony and positions of the parties, I may also need to turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

When reviewing the totality of evidence before me, I note that there is no evidence before me that either the Tenant or the co-tenant ever gave any written notice to end the tenancy. As such, the only reason that this tenancy may end is due to the One Month Notice to End Tenancy for Cause that the Landlord served on June 23, 2022. Given that this Notice was disputed, and that a hearing is scheduled for October 18, 2022, the tenancy continues until ended in accordance with the *Act*, or as determined by the scheduled hearing in October. While the Tenancy may be determined to be over due to the reason(s) on the Notice, the Arbitrator in the October 18, 2022 hearing will make that determination.

With respect to this Application, there is also no evidence before me that the Landlord has somehow prevented the Tenant from accessing the rental unit. While the Landlord is refusing the rent, given that this tenancy continues until the status is determined at the October 18, 2022 hearing, the rent is still required to be paid as per the terms of the tenancy agreement. If the Landlord simply elects not to accept it, that is the Landlord's problem and attempting to end the tenancy for non-payment of rent will be unacceptable and invalid.

Moreover, given that there is no evidence before me that the Landlord has barred the Tenant from accessing the rental unit, and given that the Landlord has not entered into a new tenancy with anyone else, clearly, this tenancy between the Tenant and the Landlord is still ongoing until, as noted above, a determination is made about the status of the tenancy on October 18, 2022.

In my view, it is clearly evident that the reason the Tenant made this Application is because his roommate/occupant has now brought in additional occupants into the rental unit. However, this tenancy is between the Landlord and the Tenant, and there has been no relationship established between the roommate/occupant and the Landlord. Undoubtedly, the problem that the Tenant has is with his roommate/occupant that he allowed to live in the rental unit, and who that person additionally allowed to live in the rental unit. This issue has nothing to do with the Landlord, but is solely between the Tenant and his possibly illegal roommate/occupant.

As such, I am unable to grant an Order of Possession to the Tenant as the Landlord has not prevented the Tenant from accessing the rental unit. The Tenant has keys to access the rental unit, and his tenancy continues with the Landlord until a determination is made about the status of the tenancy on October 18, 2022. How the Tenant elects to deal with his potential illegal roommate/occupant, and that person's additional occupants, will be up to the Tenant to determine depending on if this roommate/occupant is a sub-tenant covered under the jurisdiction of the *Act*, or if this matter is simply a civil dispute between roommates/occupants.

Ultimately, I find that the Tenant is not entitled to an Order or Possession, and I dismiss his Application without leave to reapply.

As the Tenant was not successful in this claim, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on my findings above, I dismiss the Tenant's Application in its entirety.

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: August 8, 2022

---

Residential Tenancy Branch