



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SATGURU ENTERPRISES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL

### Introduction

This hearing was scheduled to deal with a landlord's application for an Order of Possession based on a One Month Notice to End Tenancy for Cause.

An agent for the landlord appeared and was affirmed. The agent was also assisted by his daughter.

Since the tenant did not appear at the hearing, I explored service of hearing documents upon the tenant.

The landlord's agent testified that he gave the tenant the hearing documents in person and by registered mail sent to the tenant at the rental unit address. I requested the registered mail tracking number and it was provided to me orally (I have recorded the registered mail tracking number on the cover page of this decision). A search of the registered mail tracking number showed that the registered mail was not picked up and it was returned to sender.

Section 90 of the Act deems a person to be in receipt of documents mailed to them five days after mailing, even if the person refuses to pick up or accept the mail. In keeping with section 90 of the Act, I deemed the tenant to be served with the hearing documents and I continued to hear from the landlord without the tenant present.

The landlord's agent confirmed that the tenant continues to reside in the rental unit and rent was paid for October 2022. The landlord's agent confirmed the landlord still seeks an Order of Possession.

Issue(s) to be Decided

Has the landlord established an entitlement to an Order of Possession for cause?

Background and Evidence

Under an oral tenancy agreement, the tenancy started approximately two years ago. The landlord collected a security deposit of \$450.00 and the tenant is required to pay rent of \$900.00 on the first day of every month.

The landlord testified that he served the tenant with the One Month Notice to End Tenancy for Cause ("1 Month Notice") that is the subject of this proceeding on June 1, 2022. The landlord's agent described how he called the tenant to the landlord's office and when the tenant arrived the landlord's agent gave the 1 Month Notice to the tenant.

I noted that June 1, 2022 is inconsistent with the materials that are before me and I asked the landlord to get his copy of the 1 Month Notice. The landlord looked but could only find a copy of a 1 Month Notice that was issued to the tenant on August 31, 2021. The landlord's agent testified again that it was on June 1, 2022 that he served the tenant with another 1 Month Notice. Despite giving the landlord's agent and his assistant more time to find the 1 Month Notice served on June 1, 2022, I was informed that the landlord gave his only copy of the subject 1 Month Notice to the Residential Tenancy Branch. The landlord's agent stated the Residential Tenancy Branch would not make a copy of the 1 Month Notice. I informed the landlord's agent of an applicant's obligation to make copies of their supporting documents.

Analysis

Where a landlord seeks an Order of possession under section 55(2) of the Act, as in this case, the landlord bears the burden to prove that the tenant was served with a valid notice to end tenancy.

As for service, the landlord's agent testified that he gave the tenant a copy of the 1 Month Notice that is the subject of this proceeding, in person, on June 1, 2022. However, in filing this Application for Dispute Resolution the landlord submitted a copy of a 1 Month Notice that was issued by the landlord on May 1, 2022 and on the Landlord's Application for Dispute Resolution the landlord indicated the 1 Month Notice was served to the tenant in person on May 1, 2022. At no time during the hearing did the landlord testify that he gave the tenant a 1 Month Notice on May 1, 2022. As such, I

find the landlord's testimony inconsistent with what he submitted in writing. In the absence of any other proof of service, I find the inconsistent evidence is insufficient to satisfy me the tenant was served.

Also of consideration is that the landlord had testified that he gave the only copy of the subject 1 Month Notice to the Residential Tenancy Branch and he did not get or keep a copy of it. In that case, I find it unlikely that a copy of the 1 Month Notice was provided to the tenant with the hearing package, as is required under the Rules of Procedure.

In light of the above, I dismiss the landlord's request for an Order of Possession.

Having made no findings as to whether the landlord had a basis to issue a 1 Month Notice to the tenant, the landlord is at liberty to serve the tenant with another 1 Month Notice.

I make no award for recovery of the filing fee.

### Conclusion

The landlord's application is dismissed.

I make no findings as to the merits for issuing a 1 Month Notice to the tenant and the landlord is at liberty to serve the tenant with another 1 Month Notice as appropriate.

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: October 18, 2022

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Residential Tenancy Branch