



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      OPL, FFL

### **Introduction**

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

- an order of possession for the landlords' use of the residential property pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:43 am in order to enable the tenant to call into the hearing scheduled to start at 9:30 am. The landlords attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the landlords and I were the only ones who had called into the hearing.

The landlords testified they served that the tenant with the notice of dispute resolution package and supporting documentary evidence by posting them on the door of the rental unit on September 22, 2022. They submitted a photo of an envelope containing these documents attached to the door in support of this testimony. I find that the tenant was deemed served with these documents on September 25, 2022, three days after the landlords posted them, in accordance with sections 88, 89, and 90 of the Act.

### **Issues to be Decided**

Are the landlords entitled to:

- 1) an order of possession; and
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the landlords, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The parties entered into a written, month to month tenancy agreement starting December 31, 2021. Monthly rent is \$1,400 and is payable on the first of each month. the rental unit is the basement suite of a single detached house. The landlords occupy the upper level of the house. The tenant paid the landlords a security deposit of \$700, which the landlords continue to hold in trust for the tenant.

On June 26, 2022, the landlords personally served the tenants with a 2 month notice to end tenancy for landlords' use of the property (the "**Notice**"). The landlords indicated that their daughter would be moving into the rental unit. It specified an effective of August 31, 2022.

The landlords testified that the tenant did not move out on the effective date specified, or at all. They stated that he did not pay August 2022 rent (as he was entitled to an amount equal to one month's rent because he was served the Notice), but he has paid monthly rent in full for September, October, November, and December 2022.

### **Analysis**

Section 49 of the Act, in part, states:

#### **Landlord's notice: landlord's use of property**

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[...]

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*]

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice,

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

I have reviewed the Notice and find that it complies with form and content requirements of section 52 of the Act.

Based on the landlords' testimony, I find that they served the tenant with the Notice personally on June 26, 2022. The tenant therefore had until July 11, 2022 (15 days later) to dispute the Notice at the Residential Tenancy Branch. He did not do this.

As such, section 49(8) of the Act applies, and the tenant is conclusively presumed to have accepted the tenant ended on the effective date of the Notice, August 31, 2022.

Accordingly, the landlords are entitled to an order of possession. At the hearing, the landlords indicated that, as the tenant had already paid December 2022 rent, they would like the order of possession effective at the end of December. This is a reasonable request which I grant.

Pursuant to section 72(1) of the Act, as the landlord has been successful in the application, they may recover the filing fee from the tenant. Pursuant to section 72(2) of the Act, the landlords may retain \$100 of the security deposit in partial satisfaction of this order. They must handle the balance of the security deposit (\$600) in accordance with the Act.

### **Conclusion**

Pursuant to section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords by December 31, 2022 at 1:00 pm.

I order the landlords to serve the tenant with a copy of this decision and attached order of possession no later than three days after receiving it from the Residential Tenancy Branch.

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: December 2, 2022

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Residential Tenancy Branch