



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPL, OPB, OPM, MNRL, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for unpaid rent and to recover the cost of the filing fee.

Both parties appeared.

This matter was scheduled in July 2022, and the tenant was served by registered mailed with the Application for Dispute Resolution and Notice of Hearing sent on July 22, 2022. The Canada Post tracking shows the tenant was left two notification cards. The package was returned unclaimed. I find the tenant was deemed served on July 27, 2022, in accordance with the Act. Refusal or neglect to pickup the package does not override the deem service provisions of the Act.

On November 16, 2022, the tenant was personally served with the documents relating to this hearing. Filed in evidence is an affidavit of a process server.

At the outset of the hearing the tenant indicated that they would like this matter adjourned to obtain legal counsel. This was opposed. In this case, I do not find an adjournment is appropriate as this would not result in any resolution.

I find it highly prejudicial to the landlord as the tenant knew they were to vacate the premises on June 30, 2022, by the Contract of Purchase and Sales Addendum, dated February 17, 2021, where as the tenant sold the premises to the landlord and was required by the agreement to vacate by June 30, 2022, and pay \$2,000.00 per month rent. The tenant has not vacated and has not paid any rent for five months. I find it would be unreasonable in the circumstances to grant an adjournment.

Although I attempted to settle this matter. It was clear that the parties would not reach an agreement. Therefore, I found it appropriate to cease any discussion as it is not my role to attempt to force a settlement agreement.

I note that at times I had to mute the tenant's telephone line as they were overtalking me. When a telephone line is muted the party can hear, it just does not allow them to interrupt the proceedings. I should note that the tenant also hung at the conclusion of the hearing.

### Background and Evidence

In this case, the tenant was the seller of the premises when they sold their property to the purchaser in February 2021. In the Addendum to the Contract of Purchase and Sales Addendum the seller, the tenant, rented back the premises for a 11-month period and was required to give vacant possession to the purchaser on June 30, 2022. The rent was \$2,000.00 per month.

Counsel for the landlord submits that on April 29, 2022, the tenant was served with the Notice by leaving in the mailbox with the same effective vacancy date of June 30, 2022. Filed in evidence is a copy of the Notice and Proof of Service. Counsel for the landlord seeks an order of possession.

Counsel for the landlord submits that the tenant stopped paying rent and has failed to pay rent for July, August, September, October, and November 2022. Counsel submits the landlord seeks a monetary order for unpaid rent in the amount of \$10,000.00.

The tenant testified that they did sell the property and rented back the premises. The tenant stated that the home is very sentiment to them as it was their family home. The tenant stated that they were going through personal and health issues, stress and depression and want more time to vacate the premises in the new year.

The tenant acknowledged they have not paid any rent to the landlord since June 2022.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In this case the tenant was required to vacate the premises on June 30, 2022, by mutual agreement in the Contract of Purchase and Sales Addendum. This gave the tenant 11 months to find suitable living accommodations. I find this is a valid mutual agreement to end the tenancy. I find the tenant breached the Act, when they failed to move out of the premises on June 30, 2022, in accordance with that agreement.

On April 29, 2022, the landlord served the tenant with the Notice, confirming the June 30, 2022, effective vacancy date. While I find this was not necessary as there already was an agreement to end the tenancy; however, it was within the landlord's rights to issue the Notice. I find the tenant breached the Act, when they failed to vacate the rental unit on June 30, 2022, as they were conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice.

The landlord filed their application on July 8, 2022, for the above issues and did not receive a hearing date for almost 5 months later. During this time the tenant stopped pay any rent to the landlord which I find is unreasonable. I find the tenant breached section 26 of the Act when they failed to pay rent for July, August, September, October and November 2022. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$10,000.00**.

As, the tenant has been overholding the premises contrary to the Act for over 5 months, and without paying any rent, contrary to the Act. I find it would be unreasonable to grant the tenant additional time to vacate, as this would be highly prejudicial and unfair to the landlord.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** 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.

I find that the landlord has established a total monetary claim of **\$10,100.00** comprised of the above described amount and the \$100.00 fee paid for this **application**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted an order of possession and a monetary order for unpaid rent.

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 01, 2022

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Residential Tenancy Branch