



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## DECISION

Dispute Codes      OPN

### Introduction

The Landlord filed an Application for Dispute Resolution (the “Application”) on October 21, 2022 seeking an order of possession of the rental unit. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on March 2, 2023. In the conference call hearing, I explained the process and provided the participants the opportunity to ask questions.

### Preliminary Matter – Landlord service of Application and evidence

At the start of the hearing the Landlord set out how they provided the Notice of Dispute Resolution Proceeding to the Tenant on November 4, 2022. They sent more evidence to the Tenant on February 9, 2023. The Tenant acknowledged receipt of materials from the Landlord.

### Preliminary Matter – Tenant’s service of response evidence

Rule 3.15 of the *Residential Tenancy Branch Rules of Procedure* sets out the timeline for a respondent to provide their evidence both to an applicant and the Residential Tenancy Branch:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible.

Also:

... the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In the hearing, the Tenant stated they sent their evidence on February 17, 2023. They provided a tracking number for the registered mail they sent containing their prepared evidence.

As of the date of the hearing, the Landlord had not retrieved the registered mail owing to their location in the province. I find this is acknowledgement they received the registered mail information.

I find the Tenant provided response submissions and evidence to the Landlord in a timely manner and in line with the *Residential Tenancy Branch Rules of Procedure*. I accept the Tenant's evidence and give it full consideration herein.

#### Issue(s) to be Decided

Is the Landlord entitled to an order of possession in line with the Tenant's notice to end the tenancy, pursuant to s. 55 of the *Act*?

#### Background and Evidence

The Landlord provided a copy of final page of the tenancy agreement they had in place with two tenants, TB and LS. This final page bears the two tenants' signatures dated December 8, 2020. The Landlord's copy in the evidence bears the Landlord's signature; the Tenant's copy provided in their evidence does not.

The tenancy started on January 1, 2021 and after a one-year fixed term continued on a month-to-month basis. The rent amount was \$3,350 and the agreement shows the tenants paid a security deposit amount of \$1,700.

The Tenant TB (named as the Respondent and so referred to as "Tenant" herein) presented they never received a copy of the tenancy agreement that bears the Landlord's signature from the Landlord at the start of the tenancy. They inquired to the Landlord about this on October 31, 2022 by direct letter. By this time, they were "the sole tenant" at the rental unit as they stated in that letter. They also claimed that LS "was never a tenant".

The Landlord stated they had no record of providing a copy of the Landlord-signed tenancy agreement directly to the Tenant; however, they retained a copy in their records as it appears in their evidence.

The Landlord presented that LS – a former tenant – notified the Landlord that they would move out from the rental unit. This was by phone call, and as the Landlord recalled LS stated this was “definitely by October 1 [2022]”. The Landlord also recalled that LS stated that the Tenant would like to stay.

In the hearing, the Landlord described the decision they made around that time: because LS was leaving, they couldn’t have the rental unit empty on a regular basis, which would regularly occur because of the Tenant’s job. The Tenant told the Landlord that they would find roommates, thus alleviating the Landlord’s concern; however, the Landlord was not comfortable with the Tenant finding roommates on their own without the Landlord’s involvement.

The Landlord also described their conversation with the Tenant about these matters in October 2022. The Tenant mentioned to them about some prior tenancy they were involved in wherein that previous landlord suffered ill consequences because of the Tenant’s own initiative in tenancy matters with that landlord. The Landlord perceived this as a present threat from this Tenant.

The Landlord contacted LS who consented to having their name removed from the tenancy agreement. LS followed up with a letter to the Landlord on October 14, 2022; this appears in the Landlord’s evidence. In this letter, LS provided their retrospective statement that they would move out “on or before 1:00pm on September 23, 2022”.

On the Landlord’s Application for Dispute Resolution, they set out that they then gave the Tenant a “one month notice to vacate by Nov 30”. However, the Tenant stated to the Landlord they would not leave the house.

A copy of this notice from the Landlord to the Tenant appears in the Landlord’s evidence. The Landlord noted they provided “face-to-face notice” to the Tenant at the rental unit on October 20, 2022, in addition to “written notice via email”. The Tenant insisted on a documented written notice from the Landlord. The Landlord thus stated, in a letter dated October 21 attached to the rental unit door on October 23, 2022:

Further to our conversation on Thursday October 20, 2022, this letter serves as written notice that you must move out of the rental house at [rental unit address] on or before November 30, 2022, as your tenancy agreement has ended.

In a cover letter prepared for this hearing, the Tenant stated the Landlord's "justification for ending the tenancy is a letter written by [LS]". The Tenant claims this letter is "invalid" because LS was "never a tenant". This means the Landlord "has failed to lawfully provide a reason to end the tenancy." The Tenant reiterated they were the only one who paid "the entire rent" to the Landlord since January 1, 2021. LS, who attended the hearing, verified this by stating they paid 50% of the rent amount to the Tenant, who then paid the full rent amount to the Landlord.)

The Tenant submitted that, minus any proper notice to end tenancy from the Landlord, this tenancy continues "until such time as proper notice is given."

Additionally, the Tenant responded to material for this hearing sent by the Landlord showing rent being paid late, and utilities amounts being in arrears. The Tenant's response to this claim from the Landlord was that it was completely irrelevant, unrelated to the matter of the Landlord seeking to end this tenancy.

### Analysis

For reference, the *Act* s. 1 defines "tenancy agreement" as

an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit

To start, I find there is no question that the Tenant and the Landlord had an agreement in place, applying the definition of "tenancy agreement" as set out in the *Act*. I find there was a reciprocal agreement in place between the Landlord and Tenant since January 2021. I find there is no authority under the *Act* to invalidate the agreement as the Tenant submits; moreover, doing so would preclude the Tenant from having rights in place under the *Act*.

I also find it immaterial how the Tenant and LS managed to pay the rent. I find the Tenant offered this as an alternative submission to present that they were *always* a tenant instead of LS. This is the Tenant attempting to show that one tenant could not unilaterally end the tenancy without the consent of the other. As above, I find the Tenant and Landlord had an agreement in place, and that agreement was not pre-empted or otherwise ended when LS moved out.

From the evidence and the parties' submissions on this matter, I find the Landlord was well aware of the Tenant in place at the rental unit. There was no question if this was a matter of sub-tenancy or whether the Tenant was residing in the unit without the Landlord's knowledge and consent. In sum, there was a signed agreement in place to which the Tenant was a party. That confers rights and obligations as per the *Act* and the tenancy agreement between the parties.

More specific to the possibility of this tenancy ending, the *Act* s. 44(1)(a) sets out seven ways in which a tenancy ends. I find the following types are possible in this present tenancy:

- (i) section 45 [*tenant's notice*]
- (ii) section 46 [*landlord's notice: non-payment of rent*]
- (iii) section 47 [*landlord's notice: cause*]
- ...
- (v) section 49 [*landlord's notice: landlord's use of property*]

I find there is no evidence of the Tenant here giving to the Landlord a notice to end the tenancy. What exists was LS informing the Landlord that they were moving out. As above, LS' notice to the Landlord did not completely end the tenancy. The Tenant's rights and obligations as per the tenancy agreement and the *Act* were still in place.

The Landlord presented their notice to the Tenant via written statement dated October 21, 2022. Any notice from the Landlord is subject to s. 52 that sets a strict requirement for a notice to end tenancy regarding form and content. That s. 52(e) provides that a notice to end tenancy must "be in the approved form", and that is the Residential Tenancy Branch form created especially for this purpose. By applying this, I find the Landlord's note to the Tenant dated October 21, 2022 is categorically not an effective notice to end the tenancy.

Because there was an agreement in place, the Landlord cannot end the tenancy unilaterally without a situation such as those set out above. I find this is not a situation where the Landlord is ending the tenancy because of non-payment of rent, any issues of cause as listed in s. 47, or their own use of the rental unit.

In sum, this tenancy shall not end either by reason of the former tenant LS' notice to the Landlord, nor the Landlord's note to the Tenant of October 21. I grant no order of possession to the Landlord for these reasons and dismiss the Landlord's Application in this matter without leave to reapply.

The Landlord raised other issues, and proffered evidence on the pattern of rent payments and utility amounts owing. That was not the central focus of their Application in this matter and I grant no relief to the Landlord where they did not set out the details in their Application. That was not identified as a separate issue by the Landlord upon applying to the Residential Tenancy Branch; therefore, I find the issue is unrelated.

### Conclusion

For the reasons set out above, I dismiss the Landlord's Application without leave to reapply.

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

Dated: March 30, 2023

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Residential Tenancy Branch