



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPL, MND, MNR, FF

### Introduction

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

- an Order of Possession for landlord's use of the property pursuant to section 55;
- a monetary order for unpaid rent and for damage to the unit pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

The landlord and Tenant SG (the tenant) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses, and to ask questions.

### Preliminary Issues - Service of Notices and the Landlord's Application

The landlord testified that he was unable to locate Tenant DS as he vacated the rental unit some time ago. He said that he did not serve Tenant DS with his dispute resolution hearing package. At the hearing, I dismissed the landlord's application involving Tenant DS.

The tenant confirmed that the landlord did hand him a copy of the landlord's dispute resolution hearing package on September 7, 2012. I am satisfied that the landlord provided a copy of this package to the tenant.

The landlord testified that he handed the 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice), the only written evidence that either party provided for this hearing, on June 30, 2012, the date of that Notice. The landlord gave sworn testimony that he handed the tenant the 2 Month Notice seeking an end to this tenancy by August 31, 2012. He testified that a neighbour, GS (the neighbour) witnessed him hand the 2 Month Notice to the tenant. Through his translator, the tenant gave sworn testimony that he did not receive the 2 Month Notice.

Under these circumstances, it became important to hear from the neighbour who allegedly witnessed the landlord's handing of the 2 Month Notice to the tenant on June

30, 2012. The landlord said that his neighbour was not expecting to be called for this hearing, but that he was usually available at his work telephone number. He provided this telephone number and the Telus operator attempted to contact him. The attempt to contact the neighbour and obtain testimony from him was unsuccessful.

At this stage in the hearing, the landlord revised his previous sworn testimony and said that his wife also witnessed him hand the 2 Month Notice to the tenant. I asked to speak with her and she gave sworn testimony at this hearing. The landlord's wife testified that she witnessed her husband hand the 2 Month Notice to the tenant on June 30, 2012. I asked her what time of day this occurred. She was uncertain and eventually responded that this happened in the afternoon, although she could not recall an exact time. I asked whether she could estimate when this occurred. She then attempted to ask her husband when he handed the 2 Month Notice to the tenant. I reminded the landlord's wife that she was under oath and I asked her whether she actually saw her husband hand the 2 Month Notice to the tenant. She responded that the neighbour saw her husband hand the 2 Month Notice to the tenant but that she remained upstairs when her husband went to the basement suite to deliver the 2 Month Notice to the tenant. At this point, both she and her husband changed their previous sworn testimony to reflect that she did not witness the landlord hand the 2 Month Notice to the tenant.

Based on the conflicting evidence before me, I advised the parties that I was not satisfied that the landlord had demonstrated that he had served the 2 Month Notice to the tenant as claimed on June 30, 2012. Since the landlord has not adequately proven that he served the 2 Month Notice, I dismissed the landlord's application for an end to this tenancy and an Order of Possession based on the 2 Month Notice without leave to reapply.

I also asked the landlord to clarify his application for a monetary award as he had not identified any monetary amount that he was seeking. The landlord said that he did not include an amount for the monetary award sought because he has not actually repaired any of the alleged damage and does not know the extent of the damage in the rental unit. He said that there is unpaid rent for September and October 2012, but did not include any amount for his requested monetary award in his application for dispute resolution.

A respondent is entitled to know the case against him in advance of a hearing so as to have an opportunity to respond to that case. Based on the landlord's failure to complete his application and identify any monetary amount sought in his application, I dismissed the landlord's application for a monetary award with leave to reapply.

Under these circumstances, the landlord bears responsibility for his filing fee.

Conclusion

I dismiss the landlord's application for an end to this tenancy and an Order of Possession on the basis of the 2 Month Notice without leave to reapply. The 2 Month Notice is cancelled and is of no effect. The tenancy continues.

I dismiss the landlord's application for a monetary Order with leave to reapply.

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 04, 2012

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Residential Tenancy Branch