



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPL, MNR, MNDC, FF

### Introduction

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

- an order of possession for non-payment of rent, for the landlords use of the unit and breach of an agreement with the landlord to end the tenancy pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to recover their filing fee for this application from the tenant pursuant to section 72.

The landlord's agent attended the hearing by conference call and gave undisputed affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord's agent stated that the tenant was served with the notice of hearing package in person on August 5, 2015 and again in person on August 6, 2015 with the amended notice of hearing package. On the basis of this evidence, I am satisfied that the tenant was served with the dispute resolution package in person pursuant to sections 89 of the Act.

The landlord's agent gave undisputed affirmed testimony that the tenant was served with the documentary evidence in person on August 31, 2015. On the basis of this testimony, I am satisfied that the tenant was served with the evidence in person on August 31, 2015 pursuant to section 88 of the Act.

Issue(s) to be Decided

Are the landlords entitled to an order of possession?

Are the landlords entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

Background and Evidence

This tenancy began on May 1, 2015 on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated April 29, 2015. The monthly rent is \$800.00, payable on the 1<sup>st</sup> day of each month and a security deposit of \$400.00 was paid on May 1, 2015.

The landlords gave evidence that the tenant was served with a 1 Month Notice to End Tenancy (the 1 Month Notice) issued June 1, 2015 showing an effective end of tenancy date of July 31, 2015. The landlord's stated reason for cause is:

Tenant has allowed an unreasonable number of occupants in the unit/site.

The landlord's agent gave direct testimony that on numerous occasions the tenant had an unreasonable number of persons occupying the rental unit and that numerous complaints have been given to the landlord from neighbors because of frequent noise issues.

After reviewing the 1 Month Notice the landlord's agent confirmed that it was altered by the landlords to "2" instead of "1" to make it a 2 Month Notice. The landlord's agent clarified that it was the intention of the landlord to allow the tenant additional time to vacate the rental. The landlord's agent also clarified that the tenant had signed the following statement at the bottom of this notice in which she agreed to end his tenancy by July 31, 2015:

I SC agree to move by July 31, 2015.

The landlord's agent also made the following notation at the bottom of the second page of the 1 Month Notice:

Landlord will pay one months' rent back to tenant in lieu of moving costs.

The landlords' agent clarified that in trying to resolve the matter with the tenants that a mutual agreement was made to end the tenancy which was recorded on the same 2 Month Notice. The details of the agreement were that the tenant was to vacate the rental unit on July 31, 2015 and in exchange the landlord allowed the tenant 1 free month of rent for July 2015 as compensation.

The landlords' agent gave direct testimony that the landlords have incurred so many difficult issues with renters that they intend to sell the property and no longer be landlords. The landlords' agent clarified that the property is currently subject to completion of a purchase agreement with possession on October 1, 2015 to the new owners.

I note for the record that another notation was hand written at the top of the second page which states,

Tenants not able to live together due to noise complaints.

The landlord's agent stated that the tenant has not vacated the rental unit as of the date of this hearing and has not paid any rent for August and September. The landlords' agent stated that the tenant has not filed an application to dispute the notice to end tenancy.

The landlords seek an end to the tenancy and to obtain an order of possession and a monetary order which consists of recovery of the rent for July (\$800.00), unpaid rent for August (\$800.00) and pro-rated rent until the date of the hearing for 8 days ( $\$800.00 \times 8/30 \text{ days} = \$213.33$ ), for a total monetary claim of \$1,813.33.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

The landlords have also made a selection on the application to obtain an order of possession as a result of a 10 Day Notice to End Tenancy issued for Unpaid Rent (10 Day Notice). During the Hearing the landlords' agent clarified that no 10 Day Notice was served, but was seeking an end to the tenancy as the tenants failed to pay any rent after occupying the rental premises past the agreed end of tenancy date of July 31, 2015.

On June 1, 2015, the landlords served the tenant with the 1 Month Notice. The 1 Month Notice set out that it was being given as:

- the tenant has allowed an unreasonable number of occupants in the unit;

The landlords' agent provided direct testimony that the tenant allowed an unreasonable number of occupants in the rental unit, but was unable to provide sufficient details in support of this reason.

Section 47(1)(c) of the Act permits a landlord to terminate a tenancy by issuing a 1 Month Notice in cases where a tenant has allowed an unreasonable number of occupants in the unit.

However, the 1 Month Notice was altered by the landlord to become a 2 Month Notice while using the reasons and content for cause under a 1 Month Notice. The landlord's application for dispute resolution sought an end to this tenancy on the basis of a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlords have also provided details on the altered 1 Month Notice which would constitute a mutual agreement to end the tenancy as shown in the notations on the bottom of page one and two of the 1 Month Notice. The tenant agreed to vacate the rental unit on July 31, 2015 as requested by the landlords and the landlords provided compensation equal to one month's rent to the tenant in lieu of moving costs. This provision of compensation equal to the last month's rent is a required feature of a standard 2 Month Notice to End Tenancy for Landlord's Use of Property. The notations also show that both the landlord, M.C. and the tenant, S.C. signed in acceptance of this mutual agreement.

Section 47 (3) of the Act states,

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

Section 52 of the Act reads in part as follows,

52 In order to be effective, a notice to end a tenancy must be in writing and must

**(e) when given by a landlord, be in the approved form.**

Based upon the landlord's evidence, the form of the 1 Month Notice was altered to reflect the contents of a 1 Month Notice and portions of that of a 2 Month Notice. Portions of a mutual agreement to end tenancy were also reflected on the same 1 Month Notice. I find that the 1 Month Notice issued by the landlord is confusing as it contains remnants of three different types of notices. It is unclear which path the landlords wished to proceed to end this tenancy. The notice is set aside and the tenancy shall continue.

The landlords' application for an order of possession as a result of unpaid rent is dismissed as no 10 Day Notice was issued and served upon the tenant.

As for the landlords' monetary claim, I find that the landlords have failed to provide sufficient evidence at this time of unpaid rent and as such, dismiss this portion of the application with leave to reapply. As the landlords have been unsuccessful in their application, I dismiss their application to recover their filing fee from the tenant.

### Conclusion

The landlords' application for an order of possession is dismissed, as is their application to recover their filing fee.

The landlords' application for a monetary order is dismissed 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: September 15, 2015

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Residential Tenancy Branch

