



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

OPC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause and to recover the filing fee from the tenant for the cost of the application.

The landlord attended the hearing, gave affirmed testimony and provided evidentiary material in advance of the hearing. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony, and no one for the tenant joined the call. The landlord testified that the hearing package was served on the tenant by registered mail on April 20, 2017 and has provided the original Canada Post cash register receipt bearing that date, and I am satisfied that the tenant has been served in accordance with the *Residential Tenancy Act*.

All evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Is the landlord entitled under the *Residential Tenancy Act* to an Order of Possession for cause?

### Background and Evidence

The landlord testified that she is the property manager and agent for the landlord company.

This fixed term tenancy began on September 1, 2015 which expired on September 1, 2016 and then reverted to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,150.00 per month is payable on the 1<sup>st</sup> day of each month, and there are no rental arrears except for May, 2015; the landlord was told that if rent was collected, it would reinstate the tenancy.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$575.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment within an apartment complex, which was taken over by the landlord in July, 2016, so the landlord does not know whether or not a move-in condition inspection report

was completed at the beginning of the tenancy. A copy of the tenancy agreement has not been provided.

The landlord further testified that the tenant was served with a One Month Notice to End Tenancy for Cause on March 10, 2017 by posting it to the door of the rental unit. A copy has been provided and it is dated April 11, 2017 and contains an effective date of vacancy of April 11, 2017. The reason for issuing it states: "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park." The landlord also sent a copy to the tenant by Registered mail on March 14, 2017, and a receipt from Canada Post bearing that date has been provided. A copy of the notice has also been provided and it differs somewhat from the other one issued. It is dated March 10, 2017 and contains an effective date of vacancy of April 11, 2017. The reason for issuing it states: "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park."

The tenant has not served the landlord with an application for dispute resolution disputing the notice, and the landlord seeks an Order of Possession.

The landlord has also provided a Monetary Order Worksheet setting out monetary claims, and the landlord testified that the Residential Tenancy Branch advised that the monetary claim could be added to this application.

### Analysis

Firstly, a landlord should never refuse to collect rent. The landlord in this case testified that she didn't refuse rent, but didn't collect it because she was told that by doing so, the landlord would in effect reinstate the tenancy, and therefore the landlord didn't collect rent for May, 2017. Where a landlord is owed rent money, the landlord has a right to collect it and to avoid reinstating a tenancy, the landlord must give the tenant a receipt or some other written notification that the money is being collected for use and occupancy only and that it does not serve to reinstate the tenancy.

The *Residential Tenancy Act* states that once served, or deemed served with a One Month Notice to End Tenancy for Cause, the tenant has 10 days to dispute the notice by filing and serving the landlord with an application for dispute resolution. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord testified that the notice was served by posting it to the door of the rental unit on March 10, 2017, which is deemed to have been served 3 days later, and then sent another by registered mail to the tenant on March 14, 2017, which is deemed to have been served 5 days later, or March 19 2017. Therefore, I find that the latest date that tenant could have disputed the notice is March 29, 2017. The landlord testified that the landlord has not been served with an application for dispute resolution disputing the One Month Notice to End Tenancy for Cause, and I have no such application before me. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

The *Act* also states that incorrect effective dates contained in such a notice to end a tenancy are changed to the nearest date that complies with the law. Since rent is payable on the 1<sup>st</sup> day of each month, the notice must be effective at the end of the month following the date of service, which is April 30, 2017. Since that effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

The landlord's evidentiary material includes a Monetary Order Worksheet setting out claims for monetary compensation from the tenant. A tenant must repair any damage caused by a tenant. A party may amend an application for dispute resolution to include an additional claim or amend the amount of monetary compensation claimed, but there must be a clear and unambiguous indication of what that party seeks well in advance of a hearing. In the absence of an amended application for dispute resolution, I am not satisfied that the tenant has been put on proper notice that the landlord seeks monetary compensation since the original application for dispute resolution only claims an Order of Possession and recovery of the filing fee. Since the tenancy has not yet ended, I decline to make any findings of fact or law with respect to the merits of the landlord's monetary claim. The landlord is at liberty to make the application once the tenancy has ended.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee, and I order the landlord to retain that amount from the security deposit currently held in trust as recovery.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further order that the landlord keep \$100.00 of the security deposit currently held in trust in as recovery of the filing fee.

These orders are final and binding and may be enforced.

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: May 17, 2017

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Residential Tenancy Branch