



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession based on a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on October 24, 2017.

Both parties appeared, gave and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

At the outset of the hearing the landlords indicated that they sent their evidence to the tenant’s service address by registered mail and it was returned as “unclaimed”. The tenant confirmed this address for service during the hearing. Refusal or neglect to pick up their documents does not override the deemed service provision under the *Act*. I find tenant was served in accordance with the *Act* based on the deemed service provision stated in section 90 of the *Act* which deems documents served by registered mail served five days after they are mailed.

At the outset of the hearing the tenant indicated that this matter related to a commercial lease and the Residential Tenancy *Act* does not apply.

### Issues to be Decided

Does the Residential Tenancy *Act* apply in this case?  
Is the landlord entitled to an order of possession?

### Background and Evidence

The tenancy entered into a fixed term tenancy that began on September 1, 2015 and was to expire on August 31, 2016. Rent in the amount of \$1,500.00 was payable on the first of each month. Filed in evidence is a copy of the tenancy agreement.

The tenant testified that the *Residential Tenancy Act* does not apply as this is a commercial tenancy agreement and they sublet the rental unit.

The landlords testified that this was not commercial agreement as the premise was to be used for living accommodation, which allowed the tenant to sublet. Not a place to conduct a business.

The landlords testified that the tenant was served with the Notice by registered mail to the tenant service address. The landlord stated that the tenant did not pick up the registered mail and it was returned as “unclaimed”. Filed in evidence is a copy of the Canada Post customer receipt.

The tenant confirmed their address for service the tenant. The tenant did not explain why they are not retrieving their mail. When the deemed service provisions were explained to the tenant by the undersigned, the tenant simply responded “Oh”.

### Analysis

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

The first issue that I must determine is whether the *Residential Tenancy Act* applies to this matter.

### **What this *Act* does not apply to**

#### **4** This *Act* does not apply to

- (a) living accommodation rented by a not for profit housing cooperative to a member of the cooperative,
- (b) living accommodation owned or operated by an educational institution and provided by that institution to its students or employees,
- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,
- (d) living accommodation included with premises that

- (i) are primarily occupied for business purposes, and
  - (ii) are rented under a single agreement,
- (e) living accommodation occupied as vacation or travel accommodation,
- (f) living accommodation provided for emergency shelter or transitional housing,
- (g) living accommodation
  - (i) in a community care facility under the *Community Care and Assisted Living Act*,
  - (ii) in a continuing care facility under the *Continuing Care Act*,
  - (iii) in a public or private hospital under the *Hospital Act*,
  - (iv) if designated under the *Mental Health Act*, in a Provincial mental health facility, an observation unit or a psychiatric unit,
  - (v) in a housing based health facility that provides hospitality support services and personal health care, or
  - (vi) that is made available in the course of providing rehabilitative or therapeutic treatment or services,
- (h) living accommodation in a correctional institution,
- (i) living accommodation rented under a tenancy agreement that has a term longer than 20 years,
- (j) tenancy agreements to which the *ManufActured Home Park Tenancy Act* applies, or
- (k) prescribed tenancy agreements, rental units or residential property.

**This Act cannot be avoided**

5 (1) Landlords and tenants may not avoid or contract out of this *Act* or the regulations.

(2) Any attempt to avoid or contract out of this *Act* or the regulations is of no effect.

[Reproduced as written]

In this case, I have reviewed the tenancy agreement filed in evidence. The agreement was a fixed term agreement, which has expired, Under the *Act* reverts to a month-to-month agreement as no further agreement was entered into.

The agreement was drafted by the tenant, which is a limited company. There is nowhere in the agreement that indicates to the owner of the property that this is a commercial agreement. This is a living accommodation; there is no business that is primarily being operated inside the rental accommodation, such as a coffee shop with sleeping quarters. This is strictly a residential property that the tenant is allowed to sublet.

The agreement indicates at the top, that these are long-term rentals over 30 days, not vacation or a travel accommodation. Further the letter submitted by the tenant as evidence, which is a demand letter to the landlord from the tenant's legal counsel. In part the letter confirms that the property is sublet to staff working in the area as living accommodations.

Although the tenant in this matter is a limited company and sublets the premises to other occupants, as living accommodation, that does not excluded them from the *Act*, as the section 5 of the *Act* cannot be avoided. I find that the tenant is renting a living accommodation who is simply subletting. Therefore, I find the Residential Tenancy *Act* applies to this matter.

In this case, the tenant was served with a Notice to End Tenancy for Cause sent by registered mail on October 24, 2017. The tenant neglected to pick up the documents from Canada post.

The tenant confirmed their service address during the hearing. It appears that the tenant was purposely avoiding service, as there is a history of not picking up documents sent by registered mail. I find the tenant cannot avoid the *Act*.

I find the tenant has not rebutted the deemed service provision, such as an exceptional circumstance occurred that prevented them from picking up the documents, such as being in the hospital. Neglect or refusal to pick up documents sent in accordance with the *Act* does not override the deemed service provision. I find the tenant was served in accordance with the *Act*, on October 29, 2017.

The tenant did not apply to dispute the Notice and is therefore conclusively presumed under section 47(5) of the *Act* to have accepted that the tenancy ended on the effective date of the Notice, which was November 30, 2017.

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.

### Conclusion

The tenant failed to dispute the Notice. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession.

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: February 20, 2018

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Residential Tenancy Branch