



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEW VISTA SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNRL-s, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord filed under the Residential Tenancy Act (the “Act”) to enforce a One Month Notice to End Tenancy for Cause (the “Notice”) issued July 24, 2020, for a monetary order for unpaid rent or utilities, for permission to retain the security deposit and pet damage deposit for this tenancy, and to recover the filing fee for his application. The matter was set for a conference call.

Two Agents for the Landlord (the “Landlord”) attended the hearing and were each affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the Act and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified the Application for Dispute Resolution and Notice of Hearing had been sent to the Tenant by registered mail sent on October 20, 2020. Section 90 of the Act determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant had been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present evidence orally and in written and documentary form and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary Matters- Related Issues

I have reviewed the Landlord's application, and I note that they have applied to enforce a notice to end tenancy as well as for another issue. I find that this other issue is not related to the Landlord's request to enforce the Notice. As one of these matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

#### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Landlord's claims to request a monetary order for unpaid rent or utilities and for permission to retain the security deposit and pet damage deposit for this tenancy.

I will proceed with this hearing on the Landlord's claim to enforce the One-Month Notice to end tenancy and to recover the filing fee paid for their application.

### Issues to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 47 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

### Background and Evidence

The Landlord testified that they served the Notice to the Tenant on July 24, 2020, by attaching it to the front door of the Tenant's rental unit. The Notice indicated an end of tenancy date of August 31, 2020.

The Landlord testified that the Tenant had not disputed the Notice or moved out in accordance with the Notice and requested an order of possession to enforce their Notice.

### Analysis

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

Section 47 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause, a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 47(5).

#### ***Landlord's notice: cause***

**47 (5)** *If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*

- (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
- (b) must vacate the rental unit by that date.*

I find that the Tenant was deemed to have received the Notice to end the tenancy on July 27, 2020, three days after the Notice had been posted to his door. Pursuant to section 47(8) of the *Act*, the Tenant had 10 days to dispute the Notice. Consequently, the Tenant had until August 6, 2020, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In this case, I find that the Tenant did not dispute the Notice to End Tenancy and that the time for doing so has expired. Therefore, pursuant to section 47(5a) I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Section 55(2b) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

#### ***Order of possession for the landlord***

**55 (2)** *A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:*

*(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired*

I have reviewed the Notice, and I find that this Notice complies with section 52 of the *Act*. The Landlord is therefore entitled to an Order of Possession pursuant to section 55(2b) of the *Act*. I grant the Landlord an Order of Possession effective not later than 2 days after service of this Order upon the Tenant. Should the Tenant fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for their application. I grant permission to the Landlord to keep \$100.00 from the security deposit they are holding for this tenancy in full satisfaction of this award.

Conclusion

I find that the Tenant did not dispute the Notice and is therefore presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I grant an **Order of Possession** to the Landlord effective not later than **2 days** after service of this Order upon the Tenant. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I grant permission to the Landlord to keep **\$100.00** from the security deposit for this tenancy, in full satisfaction of the award contained in my decision.

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: December 18, 2020

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Residential Tenancy Branch