



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: O, FF

### Introduction

This hearing dealt with the landlord's application for an Order for Possession based on a Mutual Agreement to End Tenancy and to recover the cost of the filing fee from the tenant. Both parties appeared at the hearing and were provided an opportunity to be heard and respond to the other parties' submissions.

### Issues:

1. Have the landlord established an entitlement to an Order of Possession under the provisions of the Act?
2. Award of the filing fee.

### Background

Upon hearing undisputed testimony of the parties, I find that the landlord and the tenant formed a tenancy relationship starting January 1, 2009. The tenant is required to pay \$400.00 per month in rent. The rental unit is a room in the basement level of a residential property with shared accommodation of the kitchen and other living areas. The tenant shares the living areas with other tenants residing on the basement level of the house. The landlord and tenant signed a Mutual Agreement to End Tenancy on January 12, 2009 with an effective date of March 31, 2009.

The landlord provided a copy of the Mutual Agreement to End Tenancy as evidence for the hearing. The document identifies the rental unit as "Bsmt Room 2". Upon enquiry,

the agent testified that the landlord wishes to end the tenancy to perform repairs to the electrical service and because the tenants in the basement leave the rental unit a “total mess.”

The tenant testified that the landlord approached the tenant and coerced him in to signing the Mutual Agreement to End Tenancy in an effort to rid the other tenants from the residential property who are believed to be involved in drug activity. The tenant claimed that the landlord told the tenant that the landlord would take over use of basement room #2 (tenant’s room) and the tenant would move to the basement room #3. The tenant also testified that landlord has removed the basement kitchen stove and laundry hook-ups.

The landlord’s agent was provided the opportunity to rebut the tenant’s statements; however, the agent stated that he did not know anything about promising the tenant a continued tenancy in room #3 or the landlord’s motivations to rid the residential property of drug addicts. Rather, the agent affirmed that the landlord was motivated to end the tenancy to make electrical repairs and clean up the “mess” in the basement. The agent was asked to clarify his reference to the “mess”; however, the agent’s description was very rather vague. The agent was asked why the landlord did not use a 2 Month Notice to End Tenancy for Landlord’s Use to end the tenancy; however, the agent claimed the tenant indicated a willingness to move out by March 31, 2009 and the tenant signed the Mutual Agreement to End Tenancy.

The tenant testified that the landlord successfully evicted the upstairs tenants and has been making renovations. The tenant attests that he was tricked into signing the Mutual Agreement to End Tenancy to help the landlord and that if the landlord needs to paint or

replace the carpet in his room the tenant is willing to accommodate the landlord by moving his belongings out of the way for a few days. The tenant communicated that he did not have the intention to end the tenancy when he signed the agreement and that he wishes to continue with the tenancy due to his physical limitations and the location of the rental unit.

### Findings and Analysis

A tenancy may end in several ways, including a written mutual agreement to end the tenancy signed by both parties. I was provided evidence that the landlord and tenant signed an agreement to end the tenancy; however, I was also provided evidence that the document was signed under false pretenses. The agent was not able to refute the tenant's testimony concerning the landlord's conversations with the tenant because the agent was not present during those conversations. In the absence of evidence to the contrary, I accept the tenant's position that the landlord is relying upon a document signed under false pretences to end the tenancy. Therefore, I do not find the Mutual Agreement to End Tenancy to be binding upon the tenant with the effect that this tenancy shall continue.

In light of the above findings, the landlord's application is dismissed. I do not provide an Order of Possession to the landlord and I make no award for recovery of the filing fee.

The issues concerning the removal of the stove and laundry hook-ups were not part of the application before me. However, the parties are informed of the requirements of the Act which provide that a landlord must not remove an essential service and may not reduce a service or facility without notice and compensation to the tenant. The tenant is at liberty to make an Application for Dispute Resolution to have services reinstated or request compensation.

Conclusion

The landlord's request for an Order of Possession is denied. The landlord's application is dismissed in its entirety.

March 27, 2009

\_\_\_\_\_  
Date of Decision

\_\_\_\_\_  
Dispute Resolution Officer