



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **Decision**

### **Dispute Codes:**

OPC, FF

### **Introduction**

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated January 5, 2010 and purporting to be effective February 6, 2010.

### **Issue(s) to be Decided**

The issue to be determined on the landlord's application, based on the testimony and the evidence are:

- Whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause. This requires a determination of whether the landlord succeeds in proving that the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The burden of proof is on the landlord to justify that the Notice to End Tenancy should be enforced and an Order of Possession issued.

### **Background and Evidence Notice to End Tenancy**

The landlord testified that the tenancy had originally started on December 17, 2009 at which time the tenant paid a security deposit of \$275. The landlord testified that the tenant has jeopardized the health, safety and lawful rights of the landlord and other

residents due to incidents created by the tenant that involved police intervention. The landlord stated that the tenant had also not been truthful in regards to the size of his pet dog in obtaining permission to have the pet in the unit. The landlord testified that he had received numerous complaints from other residents in the building and it appears that the problem is getting worse.

The tenant testified that there was an isolated incident and although the police had attended, he had done nothing to warrant their presence and did not cause the disturbance. The tenant testified that the disruption only occurred because in his groggy state, he failed to follow police instructions and resisted them. In regards to why the tenant did not make application to dispute the One-Month Notice, the tenant stated that although he had called RTB by telephone, he could not manage get down to the office to make the application within the 10-day deadline, because he had no bus fare. The tenant argued that this fact should be taken into consideration.

### **Analysis of Issue - Notice to End Tenancy**

Under section 47 (1) (d) (ii) of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is:

- (a) not earlier than one month after the date the notice is received, and
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this instance, the effective date was stated as February 6, 2010. However, under section 47(2), I find that the effective date for the notice must be amended to comply with the Act and will be changed to February 28, 2010.

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 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.

In this instance, the tenant would have to file an application to dispute the Notice by January 16, 2010. Although the tenant provided testimony contesting the landlord's position and the cause listed on the One-Month Notice, I find that the tenant did not ever make any application to dispute the One-Month Notice. I find no provision in the Act which permits discretion based on the tenant's unfulfilled intention to dispute the notice.

Therefore I find that under the Act an Order of Possession must be issued in favour of the landlord based on the One-Month Notice.

### **Conclusion**

The landlord stated that the Order of Possession should be effective to end the tenancy on March 31, 2010. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that this amount may be retained from the tenant's security deposit of \$275.00, leaving a balance of \$225.00 still held on behalf of the tenant. The remaining deposit must be administered in compliance with section 38 of the Act.

February 2010

Date of Decision

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Dispute Resolution Officer