



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            OPC, OPB, MND, MNR, FF, O

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession for cause and an Order of Possession because the tenant has breached an agreement with the landlord. The landlord also seeks a Monetary Order to recover unpaid rent, for damages to the rental unit and to recover the filing fee. The landlord has also raised other issues. The landlords' application has been amended to include the names of both tenants residing at the rental unit.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the tenants on January 27, 2010. The tenants confirmed receipt of these documents

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Has the landlord established a monetary claim due to the loss of rent and damage to the rental unit?
- Is the Landlord entitled to an Order of Possession on the One Month Notice to End Tenancy for cause?
- Is the Landlord entitled to an Order of Possession because the tenant breached an agreement with the landlord?



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## Background and Evidence

Both parties agree that this month to month tenancy started on October 01, 2009. Rent for this one bedroom unit is \$500.00 per month due on the first of each month. The landlord served the tenants with a One Month Notice to End Tenancy for cause dated December 11, 2009. This was served to the tenants in person on December 15, 2009 with an effective date of January 15, 2010.

The landlord gave the following reasons to end the tenancy on the One Month Notice:

- 1) there are an unreasonable number of occupants in a rental unit;
- 2) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:
  - (i) has caused or is likely to cause damage to the landlord's property,
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.
- 3) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testifies to the following issues: the tenants have had a number of guests staying at the rental unit without permission from the landlord; The tenant had a satellite dish installed on the landlords property without permission from the landlord which has damaged the landlords property; the tenants or their guests have caused unreasonable noise and disturbance in the rental property by slamming doors, shouting and other loud noises. The tenant has breached a material term of the tenancy agreement by smoking inside the rental unit and smoking in an area outside which was not designated for smoking. The landlord claims he has witnesses to the tenants smoking and can smell smoke from the bathroom fan filtering through into his home.

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The tenants dispute the landlords' allegations. The tenants state that they have only had a niece and her friend and one of the tenant's grandchildren staying over for short periods at a time. Any other guests are family and friends who come to visit but do not stay over. The tenants claim they have not engaged in an illegal activity which has damaged the landlords' property. They claim the landlord gave his permission to TELUS directly before their satellite dish was installed as TELUS stated that they would not install it without the landlords' permission. This has since been removed because the landlords' wife was unhappy about the installation.

The tenants claim that they do not cause any excessive noise in the rental unit but are respectful of the landlords' property. They claim they do not even own a stereo and do not slam doors or make loud noise late at night. The tenants claim that the landlord was aware when they moved in that they smoked although they did tell him that the female tenant was attempting to stop. The landlord told them they could smoke in a certain area which was away from the security lights and any windows. Since then the landlord has told them to smoke in an area which activates the security lights and is close to windows of the home. The tenants also state that they do not smoke inside the rental unit.

The landlord claims the tenant and landlord signed a mutual agreement to end the tenancy on January 31, 2010. However the tenants have not vacated the rental unit and remain in residence. The landlord seeks to enforce this agreement and requests the tenants move from the rental unit by February 28, 2010.

The tenants agree that they did sign this agreement to end the tenancy but felt that as the landlord had accepted the rent for January, 2010 that he would allow them to continue their tenancy. The tenant's state they have attempted to pay their rent for February, 2010 but the landlord would not accept this.

The landlord has agreed to accept the rent for February, 2010 which the tenants have agreed to pay him today. The landlord has stated that this will be accepted for use and occupancy only. The landlord has not submitted any evidence concerning a Monetary Order for unpaid rent or

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damage to the rental unit but states he will inspect the property after the tenants have left to determine if there are any damages to the unit at that time.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for any of the reasons stated on the One Month Notice and as a result, the One Month Notice to End Tenancy for Cause is cancelled. However, the tenants have signed a Mutual Agreement to End Tenancy on January 31, 2010 and they have failed to move from the rental unit by this date. Consequently, the landlord is entitled to an Order of Possession based on this agreement. The landlord has agreed to extend the date given to end the tenancy to February 28, 2010.

I find the landlord has not presented any evidence to support his claim for a Monetary Order for unpaid rent and for damage to the rental unit. Therefore, this section of his claim is dismissed with leave to reapply.

As the landlord has only been partially successful with his application I find he is entitled to recover half the filing fee paid for this application to an amount of \$25.00.

## Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on February 28, 2010. This order must be served on the tenants and may be filed in the Supreme Court and enforced as an order of that Court.



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I find the landlord is entitled to be reimbursed \$25.00 towards his cost of filing this application. I order that the landlord retain this amount from the security deposit.

The landlords' application for a Monetary Order for unpaid rent and damage to the rental unit is dismissed with leave to reapply.

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 04, 2010.

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Dispute Resolution Officer