



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes            OPC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession for cause and a Monetary Order to recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were hand delivered to the tenants on January 12, 2010. The tenant's representative confirmed they had received 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

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

This tenancy started some time in 1994. Nether Party is sure of the day or month in which the tenancy started. Just over two years ago the current landlord purchased the property but no new tenancy agreement was entered into. Both Parties believe this was a month to month tenancy. Rent is \$740.00 for this unit and the tenants paid a security deposit of \$325.00 sometime in 1994.

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The landlord testifies that a One Month Notice to End Tenancy for cause was served to the tenants in person on December 09, 2009. The tenant's dispute the landlords' testimony that the Notice was served to them on December 09, 2009.

The landlord has not provided a copy of this Notice in his evidence for this hearing held today. The landlord has not provided a witness or a sworn affidavit to confirm service of the Notice on the tenants. After the hearing the landlord faxed a copy of this Notice to the Dispute Resolution Officer. The reason given on this faxed Notice is that the tenants are repeatedly late paying their rent.

The tenant's representative disputes the reason the landlord states is on the Notice. The tenants claim that the landlord does not call to collect their rent on the day it is due and comes two or three days later. The rent has always been paid by cheque to the landlord. The tenants claim that the landlord does not always write the receipt on the same day the rent cheque is given to him.

The landlord has provided a copy of a letter sent to the tenants on August 02, 2009 which states that rent is due on the first of each month. Any rent received after this date is a breach of the tenancy agreement. The landlord claims it is not his responsibility to collect rent from the tenants. He is available in his office in the building for three days before the end of the month and two days after the end of the month so tenants can pay rent to him. He also states that he has a box in the office for tenants to drop their rent cheques in if he is not available. The landlord claims he only collects rent directly from the tenants after a five day period as lapsed.

The landlord claims the tenants have been late with their rent seven times in the last year. The landlord has provided rent receipts to confirm that the rent has not been paid on the first of the month on seven occasions. The landlord testifies that he has given the tenants a receipt on the same day their rent is paid.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties; I find the landlord did not provide a copy of the One Month Notice to End Tenancy for Cause at least five days before the hearing as stated under section 3.5 (a) of the Residential Tenancy Branch Rules of Procedure. In this matter, it is the landlord who has the burden of proof and must show that an effective One Month Notice to End Tenancy was served to the tenants. As the landlord did not provide a copy of the One Month Notice to End Tenancy before the hearing date I am not satisfied that the faxed copy is the same copy of the Notice as served to the tenants. Consequently, I find that the landlord has not met the burden of proof to show that an effective Notice to End Tenancy was served on the tenants and as a result, the Notice is cancelled and the tenancy will continue.

The landlord is at liberty to re-serve the tenants and make a new application for Dispute Resolution

## Conclusion

The landlords' application is dismissed in its entirety 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 17, 2010.

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Dispute Resolution Officer