



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes          OPC, MND, FF

### Introduction

This matter dealt with an application by the landlord for an Order of Possession for cause, a Monetary Order for damage to the unit, site or property and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the tenants on October 05, 2010 the landlord also gave a copy to the tenants in person.

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?
- Is the landlord entitled to a Monetary Order for damage to the rental unit, site or property?

### Background and Evidence

Both Parties agree that this tenancy started on June 01, 2009. Rent for this basement unit is \$575.00 per month and is due on the first of each month. The tenants paid a security deposit of \$283.00 on June 01, 2009.



# Dispute Resolution Services

Page: 2

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord testifies that he served the tenants with a One Month Notice to End Tenancy for cause on September 20, 2010 by posting it to the tenant's door. The Notice indicates the following reasons:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 2) The tenant or a person permitted on the property by the tenant has:
  - a) significantly interfered with or unreasonable disturbed another occupant or the landlord,
  - b) put the landlords property at significant risk
- 3) The tenant has engaged in illegal activity that has, or is likely to:
  - a) damage the landlord's property,
  - b) adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord,
  - c) jeopardise a lawful right or interest of another occupant or the landlord.

The tenants dispute the reasons given on the Notice but state they did not file an application to have the Notice cancelled. The tenants also state they have found alternative accommodation and will be moving from the rental unit on November 15, 2010.

The landlords seek a Monetary Order to the sum of \$160.00 for damage to his fence and lock caused by the tenants. The landlords have not provided any invoices or evidence regarding this section of his claim.

The tenant's testify that the fence was damaged by a person who lives across the street and they were all in bed at the time. They state the Police were called and this person was charged with the offense. The tenants state they are not responsible for the broken lock.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. Section 47 (4) of the Act states a tenant may dispute a Notice to End Tenancy given



# Dispute Resolution Services

Page: 3

Residential Tenancy Branch  
Ministry of Housing and Social Development

under section 47 by making an application for dispute resolution within 10 days after receiving the Notice. Section 47(5) of the Act states if a tenant does not dispute the Notice they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit by that date.

The tenants agree that they did not dispute the Notice; therefore, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice. However when a landlord gives a Notice under section 47 of the Act the Notice must be given to the tenant on the day before the day that rent is due in order to be effective by the end of the following month. In this case the landlords gave the tenants the Notice on September 20, 2010 and this was deemed to have been received on September 23, 2010 as it was posted to the tenant's door. Consequently the earliest date the tenancy could end would be October 31, 2010. Therefore, the effective date of the Notice has been amended accordingly pursuant to section 53(3) of the Act and as the tenants still reside in the unit the landlords are entitled to an Order of Possession.

As the tenants state they are moving from the rental unit on November 15, 2010 I have issued an Order of Possession to take effect on that date.

With regards to the landlords claim for a Monetary Order for damages; I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the Act or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.



# Dispute Resolution Services

Page: 4

Residential Tenancy Branch  
Ministry of Housing and Social Development

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the landlords claim for damages does not meet any of the components of the above test. The landlords have not submitted any evidence to support their claim of \$160.00. Consequently the landlords claim for a Monetary Order is dismissed.

## Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on November 15, 2010 at 1.00 p.m. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlords are entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlords retain this amount from the security deposit and interest of \$283.00 leaving a balance \$233.00 which must be returned to the tenants or otherwise dealt with in compliance with section 38 of the *Act*.

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: November 04, 2010.

---

Dispute Resolution Officer