



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### Dispute Codes

For the landlord – OPC, FF

For the tenant - CNC

### Introduction

This decision deals with two applications for dispute resolution, one brought by the landlord and one brought by the tenant. Both files were due to be heard together. However, the tenant did not appear at the hearing and therefore her application is dismissed. The landlord seeks an Order of Possession for cause and seeks to recover the filing fee for this proceeding.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on November 10, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on November 15, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both parties were provided the opportunity to present evidence and make submissions. As the tenant did not appear the submissions are made by the landlord. On the basis of the evidence presented at the hearing, a decision has been reached.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession based on the One Month Notice to End Tenancy for cause?



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## Background and Evidence

The landlord confirmed that this tenancy started on September 01, 2009. This was a fixed term tenancy which was due to expire on August 31, 2010 and has now reverted to a month to month tenancy. Rent for this unit is \$945.00 per month and is due on the first of each month. The tenant paid a security deposit of \$472.50 on August 27, 2009.

A previous hearing was held in September, 2010 concerning the same issues however at that hearing the One Month Notice was cancelled as the landlord had insufficient evidence to support the reason given on the Notice.

The landlords' agent testifies that the disturbances have continued at the tenants unit and in the building by the tenant, her children and a male person living or visiting her at the unit. The landlord's agent testifies that the tenant was served with another One Month Notice to End Tenancy on October 19, 2010. The reason given on this Notice is that the tenant or a person permitted on the property by the tenant has significantly disturbed another occupant or the landlord. The landlords' agent states the tenant has had previous warning letters concerning her disturbing other tenants. The landlord states he has had tenants move out due to this tenants' behaviour.

The landlords' agent testifies that the tenant has again disturbed other tenants. He states the tenant and a male person have had altercations in the unit and outside the unit which was caused other tenants to be fearful and has disturbed their quiet enjoyment of the building. The Police have been called again to stop altercations between the tenant and her male guest. This male guest has also disturbed other tenants by fighting with the tenant and swearing loudly at the tenants children in the common areas of the building. The landlord states the tenants children have also disturbed the tenant living beneath her by continually jumping on the floor throughout the day and often late at night.

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The landlord has provided three witnesses to the tenants, her children's and her guest's behaviour. The first witness testifies she saw an altercation between the tenant and a male person who she thinks is the tenants' husband. The witness states she heard a disturbance in the hallway with crashing and banging. She states it was so loud she thought there was a problem with the building so came out of her unit and saw the tenant come flying out of her units' door. A man came out and an altercation took place. The police arrived and they were trying to calm the man down but he kept cursing and swearing. The witness states that after the Police left this man came out of the unit with the tenants three children and stood at the elevator swearing and yelling at the children. The tenant states she is afraid of coming out of her unit and going down the hallway.

The second witness is the husband of the first witness and he testifies that he came home on the day in question to find his wife fearful of living in their unit. He states a week after this event he witnessed the tenant come flying out of her unit backwards and crashing into the wall opposite. The male party came out of the unit and smacked the tenant in the face yelling at her to keep her mouth shut. This witness states the tenant is always ringing other tenant's bells at all hours to be let into the building as she has forgotten her keys. There is often crashing and banging in the hallways from the tenant and the violence has escalated with this tenant inside and outside the building.

The third witness states she lives in the unit underneath this tenant. She states that since this tenant moved in there has been fighting and swearing between her and this male person which has disturbed her. She states the tenants children have thrown juice out of the windows which has come into her unit below and cigarette butts have been thrown from the tenants' balcony. She states the children jump on the floor to such an extent that it actually shakes her apartment. This witness also testifies that the tenant disturbs her and other tenants when she has forgotten her keys and rings their numbers to be let in. She claims the tenant will swear at other tenants.



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## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. Section 47(1)(d) of the Act allows a landlord to serve a tenant with a One Month Notice to End Tenancy for cause if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

In this matter the landlord has the burden of proof to show that the reason given on the One Month Notice is valid and the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed other occupants. The landlord has provided copies of warning letters given to the tenant concerning disturbances caused by her or her children. The landlord has provided witnesses to some of the disturbances created by the tenant, her children and a male person who is either residing at the unit or is a guest of the tenant.

The tenant has failed to appear at the hearing despite having filed an application to dispute the landlords Notice. Consequently as the tenant has failed to present the merits of her application and the landlords' evidence is sufficient to uphold the Notice. I find the reason given on the Notice to be valid and the landlord has established his claim for an Order of Possession.

## Conclusion

The One Month Notice to End Tenancy for Cause dated October 19, 2010 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service on the tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.



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I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$472.50 leaving a balance of \$422.50 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

The tenants' application is dismissed in its entirety, without 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: November 25, 2010.

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Dispute Resolution Officer