



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPC FF  
                              O (CNC)

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession for Cause and to recover the cost of the filing fee from the Tenants for this application.

The Tenants filed for other, however based on what they wrote in the details of dispute and considering they provided a copy of a 1 Month Notice to End Tenancy for Cause, I accept that they were applying to obtain an Order to cancel the Notice to End Tenancy.

The Landlord appeared at the teleconference hearing; however no one appeared on behalf of the Tenants despite them having their own application for dispute resolution being heard during the same hearing.

### Issue(s) to be Decided

1. Have the Tenants breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. Is so, has the Landlord met the burden of proof to end this tenancy and obtain an Order of Possession.

### Background and Evidence

The parties entered into a written month to month tenancy agreement for this unit effective January 1, 2011. Rent is payable on the first of each month in the amount of \$850.00 and on January 3, 2011 the Tenant paid \$4725.00 as the security deposit.

The Landlord testified that on January 24, 2011 the Tenant was seen picking up cigarette butts from her landscaper/painter's rental unit. When the landscaper/painter

asked the Tenant to get off his property the Tenant assaulted the landscaper/painter by kicking him in the chest with cowboy boots and then he proceeded to repeatedly bang the landscaper/painter's head into the asphalt. The police were called and the Tenant was taken away and arrested.

The next morning, January 25, 2011, the Landlord personally served the Tenant with the 1 Month Notice to End Tenancy in the presence of two police officers.

The Landlord stated that she had made arrangements with the Tenant for a truck to attend the rental unit today at 3:00 p.m. to move him out today. The Landlord requested that an Order of Possession be issued to her effective February 28, 2011 in case the Tenant refuses to leave.

The Landlord questioned why the Tenant would be allowed to make application to cancel the Notice when he failed to file his application within the required time frames.

### Analysis

#### **Tenant's Application**

Section 61 of the *Residential Tenancy Act* states that upon accepting an application for dispute resolution, the director must set the matter down for a hearing and that the Director must determine if the hearing is to be oral or in writing. In this case, the hearing was scheduled for an oral teleconference hearing.

In the absence of the Applicant Tenants, the telephone line remained open while the phone system was monitored for ten minutes and no one on behalf of the Applicant Tenants called into the hearing during this time. Based on the aforementioned I find that the Tenants have failed to present the merits of their application and the application is dismissed, without leave to reapply.

Section 55 of the Act provides that an Order of Possession must be provided to a Landlord if a Tenant's request to dispute a Notice to End Tenancy is dismissed and the Landlord makes an oral request for an Order of Possession during the scheduled hearing.

Based on the above, I approve the Landlord's request for an Order of Possession effective February 28, 2011.

### **Landlord's Application**

Upon review of the Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenants in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice.

That being said, I have already granted the Landlord an Order of Possession based on my dismissal of the Tenant's application, therefore no further action is required.

The Landlord has succeeded with her application; therefore I award recovery of the \$50.00 filing fee.

### Conclusion

A copy of the Landlord's decision will be accompanied by an Order of Possession effective **February 28, 2011 at 1:00 p.m.** after service of the Order on the Tenant. The Order must be served on the Tenants and is enforceable through the Supreme Court as an order of that Court.

The Landlord is at liberty to retain \$50.00 from the Tenants' security deposit as full recovery of the filing fee awarded above.

The Tenant's application is HEREBY DISMISSED, 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: February 25, 2011.

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Residential Tenancy Branch