



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      OPC, MND, MNR, FF

### Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

The landlord's agent stated at the outset of the hearing that they were not seeking compensation for damage to the rental unit, as such I amend the application to exclude matters related to damage to the rental unit.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for unpaid rent; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties agree the tenancy began on January 1, 2011 as a month to month tenancy for a monthly rent of \$650.00 due on the 1<sup>st</sup> of each month with a security deposit of \$200.00 paid.

The parties agree the landlord issued a 1 Month Notice to End Tenancy for Cause dated January 31, 2011 with an effective date of February 28, 2011 citing the tenant is repeatedly late paying rent; the tenant allowed an unreasonable number of occupants in the site; the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord's agent testified that it was served on February 2, 2011 by posting it on the door to the rental unit. The tenant testified that it was posted about a week after that on her door.

The landlord stated the tenant has not returned the keys and that there are still tenant belongings in the rental unit. The tenant testified that she thought her husband had

taken care of removal of all items and return of the keys while she was out of town from March 1 or 2 and just returned today.

The landlord also seeks payment of rent for the month of February and lost revenue for the month of March as the landlord has been unable to rent the unit without the keys are certainty of whether or not the unit is vacated. The landlord testified that she saw the tenant's husband in the unit on Saturday, March 12, 2011. The tenant has not spoken to her husband and cannot provide any testimony regarding these statements.

The tenant testified that she should not have to pay rent for March or even for February 2010 because she states the landlord has sold the property and she should have a month's free rent as per the *Act*.

The tenant asserts that the landlord issued her a previous notice for this reason, but she is unsure where the notice is. The tenant also testified she had a witness who overheard the landlord tell the tenant they had sold the property. The landlord's agent testified they have not sold the house but that they have had it listed for sale for 7 months, long prior to this tenancy.

### Analysis

Section 47 of the *Act* states a landlord may end a tenancy by providing the tenant with notice to end the tenancy for the reasons cited in the notice submitted into evidence and that if the tenant does not file an Application for Dispute Resolution within 10 days to contest the notice the tenant is deemed to have accepted that the tenancy will end on the effective date of the notice.

Section 47 also stipulates that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received. As per the testimony of both parties the notice was not received until after February 1, 2011, as such the earliest possible effective date is March 31, 2011.

Section 53 states that if the effective date in a notice to end tenancy for cause is not compliant with Section 47 the effective date is deemed to be the earliest possible date that complies with the section, in this case March 31, 2011.

As the tenant has provided no evidence that the landlord provide a notice to end tenancy for landlord's use of the property (Section 49), I find the landlord has established that the landlord is entitled to rent for the month of February 2011.

In addition, based on the landlord's testimony and no contrary testimony from the tenant, I find the tenant is still in possession of the rental and as such is responsible for the payment of rent for March 2011.

Conclusion

I find that the landlord is entitled to an Order of Possession effective **March 31, 2011 after service on the tenant**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,350.00** comprised of \$1,300.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: March 15, 2011.

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Residential Tenancy Branch