



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **Decision**

**Dispute Codes:** OPC

### **Introduction**

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated January 1, 2011 and purporting to be effective February 1, 2011 and the One-Month Notice to End Tenancy for Cause dated February 1, 2011 and purporting to be effective March 1, 2011. Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issue to be determined on the landlord's application, based on the testimony and the evidence is whether the landlord is entitled to an Order of Possession based on either of the One-Month Notices to End Tenancy for Cause. The burden of proof is on the landlord to justify the Notice to End Tenancy.

### **Preliminary Matter**

The applicant landlord was accompanied by an advocate and the respondent tenant challenged landlord's right to include a person unknown to the tenant in the capacity of agent or supporter for the landlord.

Rule 8.3 of the Residential Tenancy Branch Rules of Procedure states that a party to a dispute resolution proceeding may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

I find that either party are at liberty to be accompanied, supported or represented by a person of his or her own choosing.

### **Background and Evidence Notice to End Tenancy**

The landlord testified that the tenancy had originally started in June 2010 with rent of \$420.00 and at which time the tenant paid a security deposit of \$210.00. The landlord testified that the tenant has jeopardized the health, safety and lawful rights of the

landlord and other residents due to the tenant's conduct and that the tenant has also been repeatedly late with the rent.

The landlord submitted evidence including bank records and receipts to confirm the payment history of the tenant and copies of letters of complaint from other occupants in the complex. No written tenancy agreement was submitted. The landlord testified that other residents have left because of problems caused by this tenant. The landlord testified that a One-Month Notice to End Tenancy for Cause was served on January 1, 2011 and a second One-Month Notice to End Tenancy for Cause was served in person on February 1, 2011. The landlord is seeking an order of possession based on the January 1, 2011 Notice.

The tenant testified that he received a One-Month Notice to End Tenancy for Cause for sometime in January 2011 and did not recall receiving the Notice dated February 1, 2011 at all. The tenant acknowledged that he had paid the rent late, but stated that he was given permission by the landlord to pay late. The tenant stated that he did not file an application for dispute resolution to dispute the Notice.

### **Analysis**

Under section 47 (1) of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the tenant has been repeatedly late with the rent.

In this instance the landlord issued a One-Month Notice to End Tenancy for Cause dated January 1, 2011. However, I find that the landlord accepted rent from the tenant on January 7, 2011 and this occurred *after* the first One Month Notice to End Tenancy for Cause was served. I find that the landlord did not issue a receipt specifically stating that the January payment was being accepted "for use and occupancy only" and that the tenancy was not being reinstated despite the payment. I find that, while the landlord may not have intended on reinstating the tenancy, the tenant, may have presumed that the landlord's acceptance of his payment functioned to erase the Notice.

Section 11 in the Residential Tenancy Guidelines provides that if a landlord accepts the payment of rental arrears for the period after the effective date of the Notice, then the intention of the parties will be in issue. According to the guidelines, intent can be established by evidence when:

- the receipt shows the money was received for use and occupation only.
- the landlord specifically informed the tenant that the money would be for use and occupation only, and
- the conduct of the parties indicates the intention.

Given the above, I find that the tenancy was reinstated after the Notice dated January 1, 2011. Therefore, the remaining issue is whether or not an Order of Possession is warranted based on the February 1 One Month Notice to End Tenancy for Cause..

Section 47(2) states that a notice under this section must end the tenancy effective on a date that is: (a) not earlier than one month after the date the notice is received, and; (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The effective date on the February 1, 2011 Notice was stated to be March 1 2011. However, under section 47(2), I find that the effective date for the notice must be amended to comply with the Act as March 31, 2011.

The Act states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice. However, if a tenant who has received a notice under section 47 does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

In this instance, the tenant would have had to file an application to dispute the Notice by February 11, 2011. Although the tenant provided testimony contesting the landlord's position and the cause listed on the One-Month Notice, I find that the tenant never made an application to dispute the One-Month Notice. Therefore I find that, under the Act, an Order of Possession must be issued in favour of the landlord based on the One-Month Notice dated February 1, 2011.

### **Conclusion**

I hereby order that the tenancy will end and issue Order of Possession effective March 31, 2011. This order must be served on the tenant and may be filed in the Supreme Court 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 2011.

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Residential Tenancy Branch