



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

**Dispute Codes:** OPC, CNC, MNDC

### **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 3, 2011 and purporting to be effective February 28, 2011. The hearing also dealt with an application by the tenant disputing the notice and requesting a monetary order for damages. Both parties appeared and gave testimony.

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

The issue to be determined on the landlord's application, from the testimony and the evidence, is whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause or whether the Notice should be cancelled as the tenant has requested. The second issue to be determined on the tenant's application is whether or not the tenant is entitled to receive a monetary order for damages in the amount of \$25,000.

The burden of proof is on the landlord to justify the Notice to End Tenancy. The burden of proof is on the tenant to prove that monetary compensation is warranted for damages.

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

The landlord testified that the tenancy had originally started in April 2008, the rent is now \$661.00 and the tenant paid a security deposit of \$300.00 and pet damage deposit of \$300.00. The landlord testified that the tenant has been repeatedly late with the rent and gave evidence to prove that there were three recent incidents in which the rent was received late. The landlord testified that the tenant was served with a One-Month Notice and did not dispute it within the ten-day deadline to do so. The landlord is seeking an end to the tenancy and has applied for an order of possession.

The tenant acknowledged that the rent was paid late on three occasions. The tenant stated that she had attempted to make an application to dispute the One-Month Notice in January 2011 right after the Notice was received and a hearing was held on March 1, 2011 on the tenant's application. However, the tenant had mistakenly failed to

properly indicate, on the dispute resolution application form, that she disputed the One Month Notice to End Tenancy for Cause. However, the tenant, was successful at the earlier hearing in being granted a monetary order for loss of quiet enjoyment. The tenant testified that after issuing the One Month Notice to End Tenancy, the landlord had subsequently reinstated the tenancy by accepting payment of rent. The tenant perceived this as a clear indication that the tenancy would be continued.

The landlord did not agree that she accepted the rent thereby reinstating the tenancy. The landlord pointed out that she did not have the opportunity to issue a receipt "*for use an occupancy only*" because part of the tenant's rent always comes to the landlord directly in the form of a cheque from the Ministry. The landlord stated that she did not cash the cheque that arrived for the March 1, 2011 rent. The landlord stated that because the effective date for the end of the tenancy shown on the One Month Notice to End Tenancy for Cause was February 28, 2011 no rent was owed for March.. According to the landlord, the remaining portion of the tenant's rent payment was always deposited directly into her bank account. As far as the landlord is concerned, there was no valid reason for the tenant to conclude that the tenancy was reinstated. The landlord believes that the One Month Notice to End Tenancy for Cause should be enforced with an Order of Possession.

The tenant also testified that she was seeking monetary compensation for her emotional upheaval and inability to enjoy the suite due to interference by another resident.

### **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 3, 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, for a Notice deemed received on January 12, 2011, the tenant would need to file an application to dispute the Notice by January 21, 2011. I find that the tenant's application was dated March 11, 2011, far beyond the ten-day deadline.

However, I find that the landlord failed to make it clear to the tenant that any rent paid after the stated effective date of February 28, 2011 would not serve to reinstate the tenancy. While I acknowledge that the rent was paid without any overt involvement by the landlord in the process, I find that the landlord was well aware the usual practice followed for payment. The landlord knew that there would be a direct deposit of funds into her account and that there would be an automatic mailing of a cheque from the Ministry. I find that it was therefore incumbent upon the landlord to ensure that the tenant was aware that the Notice was not going to be waived by paying the rent. In fact, I find it would have been logical for the landlord to advise the tenant that no rent would be accepted after February 2011 due to the pending termination of the tenancy.

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.

I find that, while the landlord may not have intended on reinstating the tenancy, the tenant may have presumed that the landlord's acquiescence in regard to the rent payment functioned to erase the Notice. Given the above, I find that the tenancy was reinstated after the Notice dated January 3, 2011 was served on the tenant.

With regard to the tenant's monetary claim, I find that the tenant provided insufficient evidence to support the claim and it therefore must be dismissed.

### **Conclusion**

I hereby order that the One Month Notice to End Tenancy for Cause dated January 3, 2011 is cancelled. I order that the landlord's application is dismissed without leave and the remainder of the tenant's application is dismissed without leave.

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