



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This matter dealt with an application by the landlord to obtain an Order of Possession for cause and the return of his filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the tenant on August 17, 2011.

The tenant advised me there was an error in the spelling of her first name. The parties did not raise any objections to the tenants name being corrected and this has now been amended.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

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

### Background and Evidence

Both parties agree that this tenancy started on May 31, 2010. The tenant pays a monthly rent of \$700.00 plus \$25.00 percent of utilities. Rent is due on the first day of each month. The tenant paid a security deposit of \$400.00 and a pet deposit of \$400.00 on May 31, 2010.

The landlord testifies he served the tenant with a One Month Notice to End Tenancy in person on July 06, 2011. This Notice has an effective date of August 01, 2011 and gives the following reasons to end the tenancy:

- 1) The tenant is repeatedly late paying rent
- 2) The tenant or a person permitted on the residential property by the tenant has
  - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- 3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
  - (i) has adversely affected or is likely to adversely affect the quiet enjoyment.
  - (ii) jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testifies the building has three units. This tenant lives in the basement unit and the other units are also occupied by the landlords' tenants. The landlord testifies the relationship between the tenants in the building has broken down. The landlord testifies that this tenant has unreasonably disturbed the other tenants when altercations, arguments and fights have broken out between them. This tenant has had multiple disputes with the other tenants and has placed nasty notes on the door and on their cars and made nasty phone calls to one of the other tenants. The landlord testifies the police have been called out many times and have been advised that all the tenants have been served with a Notice to End Tenancy and a hearing is taking place for each tenant. The landlord testifies the tenant has continued to harass the other tenants in person and on the phone.

The landlord testifies the tenant has been repeatedly late paying rent. He states she has been late three times this year at least and at least three of her rent checks have been returned NSF. The tenant has failed to pay rent for July, August and September, 2011. The landlord agrees the tenant did attempt to pay her rent for September, 2011 but the landlord was unsure if he could accept it with a hearing pending.

The landlord seeks an Order of Possession based on the reasons given in the One Month Notice to End Tenancy to become effective on September 30, 2011.

The tenant testifies that she was not aware she had to dispute the Notice to End Tenancy. She testifies she has been harassed and assaulted by one of the other tenants. She states on one occasion she was knocked unconscious and the police were called out. The tenant testifies the police told her she was to have no contact with the other tenants but to leave messages by note or phone. The tenant agrees she did leave a nasty note with one of the other tenants. The tenant claims all the tenants living there used to get along but they fell out and the other tenants now harass her and her sons.

The tenants witness states the tenant has been sick and could not dispute the One Month Notice because she is not a lawyer and could not understand it. The witness states he was called to the tenants building the night one of the tenants assaulted this tenant. He states the tenant was left unconscious and there were police cars and ambulances in attendance. The witness testifies the landlord wants to evict this tenant because the other male tenant has a restraining order against him to prevent him returning to the building. He states if this tenant is evicted the other male tenant will be able to return to his unit and the landlord will collect more rent.

The landlord disputes this is the reason for the eviction. The landlord testifies all three tenants have been served with eviction Notices and hearings for the other tenants are due to be held later this month. The landlord states he will assist the tenant in moving if she can find alternative accommodation by September 30, 2011.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that the tenant did not dispute the Notice within the 10 days allowed as indicated on page two of the One Month Notice to End Tenancy pursuant to s. 47(4) of the *Act*. The Notice was served to the tenant in person on July 06, 2011 therefore the tenant had until July 16, 2011 to dispute the Notice. The tenant has claimed she could not dispute it because she was in hospital at the time. However, I find she was served in person and did receive the Notice and she has provided no evidence to support her claim that she had been hospitalized and was incapacitated to the point that she could not either dispute the Notice herself or appoint someone to dispute it on her behalf. Therefore, the tenant is considered to have accepted the Notice pursuant to s. 47(5) of the *Act*. Under s. 90 of the *Act*, the One Month Notice to End Tenancy for Cause must give one clear months notice to end the tenancy. Therefore the effective date to end the tenancy is amended to August 31, 2011 rather than August 01, 2011 pursuant to s. 53 of the *Act*.

Consequently, the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act* effective on September 30, 2011.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **on September 30, 2011**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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 \$400.00 leaving a balance \$350.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: September 20, 2011.

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Residential Tenancy Branch