



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – CNC, FF

For the landlord – OPC, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenants and one brought by the landlords. Both files were heard together. The tenants seek to cancel the One Month Notice for cause and to recover their filing fee. The landlords seek an Order of Possession for cause and to recover their filing fee.

I find that both parties were properly served pursuant with notice of this hearing for the purposes of the Act.

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

### Issue(s) to be Decided

The tenant is disputing the basis for the Notice and the issues to be determined based on testimony and evidence are:

- Is the One-Month Notice to End Tenancy under section 47 of the *Act*, warranted, **or** should the notice be cancelled?
- If the Notice is upheld are the landlords entitled to an Order of Possession.

Background and Evidence

Both Parties agree that this tenancy started on May 01, 2010. This started as a fixed term tenancy and has reverted to a month to month tenancy at the end of that fixed term. Rent for this unit is \$1,100.00 per month and is due on the 1<sup>st</sup> day of each month.

A previous hearing was held on August 12, 2011 and the tenant attending has stated he believes because he was successful in having a previous One Month Notice overturned that the landlord has served this Notice in retaliation.

The landlords testify that this is not the case they state they served this One Month Notice to the tenants on August 19, 2011. This Notice was left in the tenant's mailbox and has an effective date of October 01, 2011. The Notice has two reasons stated to end the tenancy:

- 1) The tenant is repeatedly late paying rent.
  
- 2) The tenant's rental unit is part of an employment arrangement that has ended and the unit is needed for a new employee.

The male landlord testifies that they operate and run a farm. The male landlord has had to find full time employment elsewhere and his wife can no longer manage the farm on her own and they have had to employ someone to help out doing farm work. They testify that the tenant is not employed by them and is just a tenant renting a cottage on the property. They state their employee is due to start on October 01, 2011 and will require the rental unit to live in. The female landlord testifies that she is overwhelmed with trying to manage the farm on her own and that is why they offered employment to this person.

The landlords call their witness who is the new employee. This witness testifies that he is due to start work on October 01, 2011 and his work will involve taking care of the cattle, field work and general farm work. He states part of the employment arrangement is for him to live in the house located on the property. The witness testifies he has been helping on the farm since the landlords got it and continues to help out at weekends but will now be employed by the landlords

The tenant questions this witness and asks him where he lives now and is he a truck driver. The witness informs the tenant of his current location and that he is not a truck driver.

The male landlord testifies that he started his full time employment at the end of June, 2011 but continues to do farm chores in the morning before work and after work. The landlord provided his place of work and his employee number as evidence of his full time employment. He states he and his wife need to employ someone as a farmhand as they also wish to expand the farm and their new employee has worked for them in the past.

The tenant disputes this reason given on the Notice he states he has seen the landlord on the farm everyday and again brings up the landlords reasons for issuing this Notice so soon after their last Notice was overturned.

The landlords testify the tenants are repeatedly late paying rent. He states rent is due on the 1<sup>st</sup> day of each month and the tenant will pay some rent but the reminder is paid a few days later. The landlord testifies this affects their rent payments they have to make to their landlord. The landlords testify that these late payments occur frequently and at least six or seven times this year.

The tenant does not dispute that he has not paid all his rent on the 1st of each month. He states he can only get so much money out of his in one day and then has to get the remainder a few days later. The tenant testifies he has only done this about three times this year.

### Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. With this in mind I have considered the landlords first reason given on the

one month Notice to End Tenancy. This reason states the rental unit was part of an employment arrangement however both parties agree the tenants were not employed by the landlords. Consequently it is my decision that if the landlords require the rental unit for the purpose of housing an employee they have not served the tenants with the correct Notice to End Tenancy and should have served the tenants with a Two Month Notice to End Tenancy instead.

I have considered the landlords second reason given to end the tenancy concerning repeatedly late payment of rent. The *Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Generally three late payments are the minimum number sufficient to justify a notice under these provisions. It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments.

The landlord has stated this happens frequently and at least six or seven times this year. The landlord has provided no documentary evidence to support this but the tenant does not dispute that he has been late with the full amount of rent on three occasions this year.

Consequently, it is my decision that the tenants are deemed to have been repeatedly late with the rent and the landlords are therefore entitled to an Order of Possession based on this reason given in the One Month Notice to End Tenancy.

As the landlord has been successful with his application I find he is entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the Act.

As the tenants have been unsuccessful with their application they must bear the cost of filing their own application.

### Conclusion

I HEREBY uphold the One Month Notice to End Tenancy and issue an Order of Possession in favour of the landlords effective on October 01, 201. This order must be served on the

Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is 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: September 22, 2011.

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Residential Tenancy Branch