



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, OPC, MNR, MNSD, MNDC, FF

### Introduction

This matter dealt with an application by the landlord to obtain an Order of Possession for unpaid rent and an Order of Possession for cause. The landlord also seeks a Monetary Order for unpaid rent, and for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulations or tenancy agreement. The landlords seek an order to keep the security deposit and recover the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was sent to the tenant by registered mail on September 09, 2011. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on September 14, 2011, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave sworn testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*.

### Preliminary Issues

At the outset of the hearing the landlords' agent stated that the landlord has not provided the 10 Day Notice to End Tenancy in evidence but only the One Month Notice to End Tenancy. The landlords monetary claim deals with the tenants' failure to pay rent and no

evidence has been provided concerning this. As the monetary issues are unrelated to the landlords application for an Order of Possession for cause I decline to hear the landlords Monetary Issues at this hearing and they are dismissed with leave to reapply pursuant to the Residential Tenancy Branch Rules of Procedure 2.3 which state that "if in the course of a dispute resolution proceeding, the dispute resolution officer determines that it is appropriate to do so, the Dispute Resolution officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." Therefore the hearing proceeded with the landlord's application for an Order of Possession for cause and the filing fee.

#### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?

#### Background and Evidence

The landlords' agent testifies that this tenancy started on March 20, 2011. Rent for this unit is \$1,200.00 per month and is due on the 20<sup>th</sup> of each month. This is a fixed term tenancy which was due to expire on September 20, 2011 and has now reverted to a month to month tenancy. The tenant paid a security deposit of \$600.00 on May 31, 2010.

The landlord testifies he served the tenant with a One Month Notice to End Tenancy by registered mail on August 02, 2011. This Notice has an effective date of September 02, 2011 and gives the following reasons to end the tenancy:

- 1) The tenant has allowed an unreasonable number of occupants in the unit
- 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,
  - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) Put the landlord's property at significant risk;

3) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has, or is likely to:

- (i) Damage the landlords' property
- (ii) Adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
- (iii) Jeopardized a lawful right or interest of another occupant or the landlord

4) The tenant has assigned or sublet the rental unit without the landlord's written consent.

The landlord testifies the tenant has an unreasonable amount of male visitors at all hours of the day and night which disturbs other tenants in the building. The landlord has received complaint letters from the Strata Council about the tenants' unacceptable behavior in the building and suspects' illegal activity taking place from her rental unit.

The landlord seeks an Order of Possession based on the reasons given in the One Month Notice to End Tenancy to be effective on 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 by registered mail on August 02, 2011 and is therefore deemed to have been served on August 07, 2011 the fifth day after it was sent. The tenant therefore had until August 17, 2011 to dispute the Notice but I have no evidence before me that the tenant did file an application to dispute the Notice and she has failed to appear at the hearing today. 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 and is effective the day before the day of the month

that rent is due. Therefore the effective date to end the tenancy is amended to September 20, 2011 rather than September 02, 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 two days after service.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **Two days after service**. 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 landlords are entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlords retain this amount from the security deposit of \$600.00 leaving a balance \$550.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

The landlords are at liberty to reapply for the remainder of their monetary claim.

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 26, 2011.

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Residential Tenancy Branch