



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, O, OPC

### Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy that was given for cause.

The tenant's application is a request to cancel the Notice to End Tenancy that was given for cause, and a request for an order for the landlord to comply with the Residential Tenancy Act.

### Background and Evidence

On August 29, 2011 the landlord personally served the tenant with a one month Notice to End Tenancy for cause stating the following reasons:

- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.
- Tenant or person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - seriously jeopardize the health or safety or lawful right of another occupant or the landlord.
  - put the landlords property at significant risk

I dealt first with the question of the security deposit.

The landlord testified that:

- In the tenancy agreement the tenant was required to pay a security deposit however he has failed to do so.
- They have asked the tenant on numerous occasions for the security deposit and every time he has some excuse as to why he cannot pay the deposit.
- In the tenants evidence package he claims that I told him not to worry about paying the security deposit, however I deny ever making that statement.
- I deposit was required, and it's well past the 30 days since it was required and therefore she is requesting an Order of Possession based on the Notice to End Tenancy.

The tenant testified that:

- The tenancy agreement does state that he is required to pay a security deposit however he has had some financial problems and had been unable to pay it.
- He has done a substantial amount of work on the property and therefore one day the landlord spoke to him and told him not to worry about paying the security deposit, considering the amount of work he had done.

- His son overheard the conversation and has supplied a witness statement to support his claim.
- He therefore does not believe the landlord should be allowed to end the tenancy for failing to pay the security deposit.

### Analysis

The tenancy agreement does state that a security deposit was to be paid by April 15, 2011, and both the landlord and the tenant agree that a deposit was to be paid.

The tenant claims that the landlord told him he not to worry about the deposit (a claim that the landlord denies) however it is my decision that the tenant has not met the burden of proving that the landlord ever made such a statement.

The only evidence to support the tenants claim is a letter from his son which can hardly be considered unbiased evidence, and therefore it is my decision that the tenant has not met the burden of proving that the landlord ever waived the requirement to pay the security deposit.

Therefore since it is well past 30 days since the deposit was required to be paid, I will not cancel the Notice to End Tenancy, and this tenancy ends pursuant to the Notice to End Tenancy and the landlord has the right to an Order of Possession.

At the hearing the landlord stated that she is willing to allow the tenant to stay in the rental unit until October 31, 2001

Since the Notice to End Tenancy has been upheld for failing to pay a security deposit, there is no need for me to deal with the other reasons given for ending the tenancy.

Conclusion

Tenant's application

The tenant's application is dismissed in full without leave to reapply.

Landlord's application

I have issued an Order of Possession to the landlord for 1 p.m. on October 31, 2011

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: October 04, 2011.

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Residential Tenancy Branch