



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – MT, CNC, RP, FF

For the landlord – OPC, OPB, MNR, FF

### Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant requests more time to cancel a Notice to End Tenancy and seeks to cancel the One Month Notice to End Tenancy for cause. The tenant also seeks an Order for the landlord to repair the unit and to recover her filing fee. The landlord seeks an Order of Possession for cause and because the tenant has breached an agreement with the landlord. The landlord also seeks a Monetary Order to recover unpaid rent, and to recover their filing fee.

I am satisfied that both parties were properly served with the copies of the applications and Notices of the Hearing pursuant to s. 89 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 witnesses, 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

- Is the tenant entitled to more time to cancel the One Month Notice to End tenancy?
- If so is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to make repairs to the unit?
- Is the landlord entitled to an Order of Possession for cause?

- Is the landlord entitled to an Order of Possession because the tenant has breached an agreement with her?
- Is the landlord entitled to a Monetary Order to recover any unpaid rent?

### Background and Evidence

Both parties agree that this tenancy started on May 01, 2011. Rent for this unit is \$892.00 per month and is subsidized to \$242.00 per month. Rent is due on the first day of each month.

The tenant states she did not file her application to cancel the One Month Notice to End Tenancy within 10 days as she is overwhelmed with court cases fighting for the return of her youngest child who has been removed from her care and placed in interim care. She testifies she has had two court appearances dealing with legal remedy and was in a case meeting during this hearing which she had to excuse herself from to take part in the hearing. In light of this I have granted the tenants application for more time to file her application to cancel the notice pursuant to s. 66 of the *Act*.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on August 26, 2011 by posting it to the tenants door. This Notice was deemed to have been served three days after posting. The Notice has an effective date of October 31, 2011 and gave the following two reasons to end the tenancy:

- 1) The tenant is repeatedly late paying rent.
- 2) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The landlord testifies the tenant has been late with her rent on four occasions this year. In May, 2011 the tenant was supposed to pay her rent when she got her student loan but she delayed paying it until May 18, 2011. The landlord testifies the tenant later told her she had got her student loan earlier but gave it to her boyfriend. The landlord testifies the tenant gave post-dated cheques for rent for June and July, 2011. Both cheques were returned

NSF and were paid later in July, 2011. Rent for August, 2011 was not paid until August 17, 2011.

The landlord testifies the tenant had a Recreational Vehicle (RV) parked in the visitors parking area against the rules of the complex. The tenant was asked to remove it but refused stating it was her family vehicle. The landlord testifies that other tenants reported a man leaving the RV on a regular basis and when the landlord questioned the tenant about this asking if this man was living in the RV the tenant told her "Why would he live in the RV when he could sleep in her bed".

The landlord testifies that it is a breach of a material term of the tenancy agreement for another occupant to live in the unit without permission from the landlord. The tenant was sent a letter concerning this on August 03, 2011 asking her to provide proof that this man lived at another residence. The tenant had until August 22 to provide this proof but failed to do so. The landlord disputes the documentary evidence provided by the tenant for this hearing showing two rent receipts in this man's name as they are hand written receipts.

The landlord testifies that the tenants children have not been seen at the complex for some time and states the tenant failed to notify her that her children were not living with her as she receives subsidized rent for her unit because she has children living with her.

The landlord seeks an Order of Possession for October 31, 2011.

The landlord testifies at this time the tenant owes \$6.00 in unpaid rent, \$19.00 for an NSF fee for June, 2011 and \$25.00 for an NSF fee for July, 2011. The landlord had applied for \$60.00 but as this was an error she has amended her claim to \$50.00. The landlord also seeks to recover her \$50.00 filing fee paid for this application.

The tenant does not dispute that she has been late with her rent for June, July and August, 2011. The tenant states she told the landlord she did not have available funds for June and July but the landlord still banked her rent cheques and that is why she has incurred NSF fees. The tenant states the landlord agreed she could pay rent for May as soon as she got

her student loan and this was delayed due to the postal strike. The tenant does not dispute that she owes some rent to the landlord as she unknowingly under paid her rent by \$1.00 each month.

The tenant disputes that her boyfriend lives with her at her unit. She testifies they have a four year old child and her boyfriend comes to visit them most days. The tenant states her boyfriend lives at a different address and she has provided rent receipts showing this. The tenant states there is nothing in her tenancy agreement to say she cannot have two vehicles.

The tenant testifies that her youngest child is in interim care but her other two children still live with her and she is fighting to regain her youngest child.

The landlords witness WM is the Block Watch Captain at the complex. This witness testifies that other tenants complained to her about fighting from the tenants unit. She states she has heard arguments coming from the tenants unit. She states when the tenant and her boyfriend had a fight he would go and stay in the tenants' mobile home. The witness testifies she has seen the tenants' boyfriend leaving her unit and he was there most days.

The tenant cross examines this witness and asks her how does she know who her boyfriend is and how can she assume just because she sees a man leaving her unit that he is staying there when the witnesses son visits the complex everyday but does not live there. The witness replies that another tenant pointed out to her that this man was her boyfriend.

The tenant testifies that when she moved into the unit there was an understanding between her and the landlord that certain repairs would be carried out. The carpets were also supposed to be replaced as they stunk and were disgusting. The tenant states the landlord did send a man to measure for new carpets and she had agreed with him about moving her belongings so he could gain access to each room but after three months she asked the landlord when they would be fitted and was told the landlord had cancelled the order. The tenant testifies the landlord did give her permission to paint her unit because the landlord did not have the funds available.

The tenant has provided a copy of the move in condition inspection report which she claims shows the unit was disgusting with many areas marked as 'needs replacement'. The report also mentioned in particular the replacement of two blinds, light bulbs and covers, repairing a gate, strip and waxing a floor and replacement of three vent covers. One window was also rotten and mouldy which was not mentioned in the report. The tenant testifies the landlord did not complete this work as agreed and the whole complex was in disrepair including equipment in the children's play area which fell on her son. The tenant seeks an Order for the landlord to repair the unit, site or property.

The landlord disputes the tenants' claims the landlord testifies the condition inspection report was marked as it was to show that the tenant was not responsible for the damage in the unit. The landlord testifies she did want to replace the carpet but the tenant did not prepare her unit accordingly for the carpet fitter. The landlord testifies the tenant wanted to strip and wax the floor herself as she did not want the landlord involved. The landlord states the blinds and vents were replaced.

The landlord testifies that the tenant was not told the landlord would replace the window and argues that the window shown in the tenants' pictures was not mentioned on the move in inspection report.

The tenants witness testifies that he was not living at the tenants unit or her RV while it was parked in the complex. He states he did visit the tenant and his child each day as they were attempting co-parenting but these visits became less due to the landlords' accusations. The witness testifies that he has lived in two separate places during that time and has provided copies of two rent receipts to show this.

The landlord declines to cross examine this witness.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses. With regards to the landlords claim to uphold the reasons given on the One Month Notice to End Tenancy; 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 regard to the reason given on the notice that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so; I find there is insufficient evidence to show that the tenants boyfriend did in fact reside at the rental unit and was not merely visiting the tenant and his child on a regular basis. There is no evidence that two of the tenants' children were not residing with her at the unit and there is no evidence to show tenant was not entitled to park her RV at the unit. Therefore I find this reason given on the Notice has no merit.

The landlord and tenant both agree that rent was late for May, June; July and August although the tenant argues that the landlord agreed she could pay rent late in May. The *Residential Tenancy Act* provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions. As there is no dispute that rent was late for at least June, July and August, 2011 I find the landlord is justified in issuing a One Month Notice to End Tenancy. Consequently the landlord is entitled to an Order of Possession effective on the date of the One Month Notice pursuant to s. 55 of the Act.

The landlord has also applied for an Order of Possession based on the breach of an agreement. As there is no agreement in place other than the tenancy agreement this section of the landlords application has no merit and is dismissed without leave to reapply.

With regards to the landlords claim for a Monetary Order for unpaid rent, the landlord has testified that the tenant now only owes \$6.00 in unpaid rent, and \$44.00 in NSF fees. The

tenant agrees she does owe the unpaid rent and did have insufficient funds available to honour her rent cheques. Therefore the landlord is entitled to a Monetary Order to recover the sum of **\$50.00**.

As the landlord has been successful with her claim she is also entitled to recover the **\$50.00** filing fee from the tenant. A Monetary Order has been issued to the landlord pursuant to s. 67 and 72(1) of the Act for **\$100.00**

With regard to the tenants' application to cancel the Notice to End Tenancy; as the landlord has been successful with her application to uphold the notice, this portion of the tenants application is dismissed without leave to reapply.

With regards to the tenants application for an Order for the landlord to make repairs to the unit, site or property; While I accept that the landlord has not fully complied with section 32(1) of the Act with regard to repair and decoration to the rental unit as this tenancy will end on October 31, 2011 I am not prepared to make an Order at this time for the landlord to make repairs to the rental unit and this section of the tenants claim is also dismissed without leave to reapply.

As the tenant has been unsuccessful with her claim I find she must bear the cost of her own filing fee.

### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

The One Month Notice to End Tenancy for Cause will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on **October 31, 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 HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$100.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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 13, 2011.

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Residential Tenancy Branch