



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This conference call hearing was convened in response to the landlord's application for an Order of Possession for unpaid rent.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

### Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the month to month tenancy started on June 9<sup>th</sup>, 2008, the rent is \$850.00 per month and the tenant paid a security deposit of \$425.00.

The landlord testified that the tenant only paid the portion of the rent subsidized by Social Services, and that he still owes \$425.00. She stated further that the tenant has too many guests, and that she has received complaints from other occupants in the complex.

The tenant testified that he has had a roommate since the end of November 2011 and that the landlord completed an “intent to rent” form. He stated that on January 8<sup>th</sup>, 2012, his roommate gave the landlord’s business partner a cheque for the balance of the rent and that he refused to accept it. The roommate testified that upon giving the landlord’s partner the cheque, he declined and stated that they were being evicted. In her documentary evidence, the landlord provided a copy of the 10 Day Notice to End Tenancy dated January 6<sup>th</sup>, 2012, with proof of service that the notice was posted on the tenant’s door on that date.

The landlord stated that she did not know what actually happened between her partner and the roommate, and that even if rent was paid she wants to end the tenancy because of the number of visitors causing problems. The tenant stated that he has only seen the landlord in the complex once in four months, and that the complaints lodged against him are from former tenants who no longer reside in the complex.

### Analysis

The landlord bears the burden to prove the grounds to end the tenancy. Pursuant to Section 90 of the Act, by posting the notice on January 6<sup>th</sup>, 2012, service is deemed to be received on January 9<sup>th</sup>, 2012. It became apparent during the hearing that the landlord’s business partner assumes a number of responsibilities as landlord in this tenancy, but he was not present to give evidence at the hearing. The tenant’s roommate testified that he gave the rent on January 8<sup>th</sup>, which would have been within the required time frame. When the roommate paid the balance of the rent, the landlord’s partner was obliged to accept payment because it was made on time; therefore the 10 Day Notice to End Tenancy is deemed to be of no effect. The landlord cannot refuse payment merely because she wants the tenancy to end. Accordingly I find that the tenant paid rent and, as I just stated, the landlord’s 10 Day Notice to End Tenancy is of no force or effect.

In her documentary evidence, the landlord provided a copy of a 1 Month Notice to End Tenancy for Cause dated August 15<sup>TH</sup>, 2011, concerning events that occurred last year.

The landlord provided three written complaints; one dated March 18<sup>th</sup> 2011, one dated April 18<sup>th</sup>, 2011, and one undated. The landlord's application for dispute resolution states for reason unpaid rent; it makes no reference to ending the tenancy for cause. The landlord's testimony is vague and non-specific concerning the 1 Month Notice to End Tenancy for Cause; she merely states that the tenant has too many guests. In the absence of more material evidence, the landlord has not established on a balance of probabilities the grounds to end the tenancy for cause, particularly when that notice was issued on August 15<sup>th</sup>, 2011. For these reasons and in view of the passage of time, I find that this notice is no longer of any force or effect.

Notwithstanding, every tenant in a rental unit owes a statutory obligation towards other's right to quiet enjoyment, including the landlord. The landlord has a duty of care and a right to enforce a tenancy pursuant to the Act. Repeated breaches by a tenant do not prevent the landlord from issuing notices to end tenancy in the future or applications for dispute resolution, and the quantum of the evidence at that time may generate a different outcome.

### Conclusion

The landlord's application is dismissed.

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: February 02, 2012.

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Residential Tenancy Branch