



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OPC, MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated October 28, 2011, and effective November 30, 2011. The landlord was also seeking a monetary order for rental arrears owed and to keep the tenant's security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony.

### **Issue(s) to be Decided**

The issues to be determined on the landlord's application based on the testimony and the evidence are: 1) Whether the landlord is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause; and 2) Whether or not the landlord is entitled to a monetary order for rental arrears.

### **Background and Evidence**

The tenancy had started on April 30, 2011 and the current rent is \$1,000.00 with a security deposit of \$500.00 being held. The landlord testified that \$250.00 of the security was refunded to the tenant pursuant to a promise to vacate. However, the tenant did not vacate. The landlord testified that the tenant did not pay the rental arrears and was issued several Ten Day Notice to End Tenancy for Unpaid Rent. No copies of these Notices were in evidence. According to the landlord, the tenant now owes \$1,300.00 which is being claimed.

The landlord testified that the tenant was issued a One Month Notice to End Tenancy for Cause and did not dispute the Notice, nor did the tenant move out. The landlord is seeking an Order of Possession based on the One Month Notice to End Tenancy for Cause. A copy of this Notice was in evidence.

## **Analysis**

Under section 47 of the Act, a landlord may terminate the agreement by giving notice to end the tenancy for cause. Regardless of whether or not the merit of the One-Month Notice is found sufficient to support a termination of this tenancy, the fact is that this tenant had failed to dispute the Notice by making an application within the statutory 10-day deadline to do so. If a tenant who has received a notice under section 47 fails to make an application to dispute the Notice, the Act states that the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

With respect to the landlord's claim for rental arrears, I accept that arrears may be owed, but find there is not sufficient evidence to clarify the amount owed based on the evidence before me. I find that the landlord had issued Ten Day Notice to End Tenancy for Unpaid Rent in the past, but accepted partial payments from the tenant and there is the possibility that the tenant perceived that the tenancy was reinstated. For this reason I am unable to determine the monetary portion of the landlord's application.

That being said, I find that the tenant promised to vacate the unit and failed to honour that commitment. The fact that the One Month Notice was not disputed verifies his intention to move. Accordingly I find the landlord is entitled to an Order of Possession.

## **Conclusion**

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective two days after service. The order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I order the landlord's monetary claim for rent to be dismissed with leave to reapply.

However, I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. I order that this amount may be retained from the tenant's remaining security deposit of \$250.00, leaving \$200.00 held in trust for the tenant. The remaining deposit must be administered in compliance with section 38 of the Act.

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 07, 2012.

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Residential Tenancy Branch