



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC, FF

### Introduction

This hearing dealt with the landlord's application for an Order of Possession for cause. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

At the commencement of the hearing I enquired about service of hearing documents. The landlord provided testimony that the tenants were served by registered mail. The tenants stated they were served in person by the new manager. The landlord could not locate a registered mail receipt. I accepted that the tenants were served by the manager in person as they stated.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Was the Notice to End Tenancy withdrawn and the tenancy reinstated?

### Background and Evidence

I was provided undisputed evidence as follows: The one year fixed term tenancy commenced in June 2011 and the tenants are required to pay rent of \$720.00 on the 1<sup>st</sup> day of every month. On December 16, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) and personally served it upon the tenants. The Notice has a stated effective date of January 31, 2012. The female tenant had attended the Residential Tenancy Branch to enquire about disputing the Notice but did not follow up on such action as the landlord had taken rent for January 2012. The tenants continue to reside in the rental unit.

The former manager submitted that prior to issuing the Notice they noticed a strong foul odour in the hallways outside of the rental unit. When the door was opened slightly for a brief period of time it was observed that the smoke detector was detached from the ceiling. The landlord issued the Notice on December 16, 2012. An inspection took

place February 7, 2012 and pictures of the unit were taken on February 7, 2012. The landlord filed this application seeking an Order of Possession on February 28, 2012.

The tenants submitted a very different version of events. The tenants submitted that a police officer had been in their unit in December 2011 and reported the lack of a working smoke detector to the landlord. The tenants were of the position it was the landlord's responsibility to repair it but they have since reattached it. The fire inspector came in their unit and observed a propane bottle in the unit which should have been outside. The tenants submitted that the landlord took photographs of the unit December 14, 2011 but they have since cleaned up the unit and in February 2012 an interim manager, who was not in attendance at the hearing, informed the tenants they were not being evicted. The tenants' rent cheques were sent to the landlord for February and March 2012.

The landlord explained there was an interim manager during January and February 2012 and the landlord acknowledged that the interim manager not available to testify. I heard the current manager commenced duties March 1, 2012. The landlord attributed the problems with management as the reason there was a delay in making this application. The application was filed February 28, 2012 and names both the current and former managers as agents of the landlords.

With respect to rent paid in February or March 2012 the current manager acknowledged that her records were showing that one-half of the rent was paid for February 2012; however, the landlords pointed out that this hearing was not about rent.

The landlord provided the following evidence for this proceeding: a copy of the tenancy agreement; 1 Month Notice; and photographs of the rental unit.

### Analysis

Under the Act, if a tenant does not dispute a 1 Month Notice to End Tenancy, by filing an Application for Dispute Resolution, within 10 days of receiving the Notice they are conclusively presumed to have accepted the tenancy will end on the effective date of the Notice.

This case involves a Notice to End Tenancy that was not disputed by the tenants; however, the tenants made submissions that indicate the tenancy was reinstated by the interim manager. The landlord's agents in attendance at the hearing could not refute that submission by the tenants. I also found the tenants' submission that the Notice to End Tenancy was withdrawn to be supported by the following:

- the interim manager did not make an Application for Dispute Resolution seeking an Order of Possession even though the tenants did not vacate the rental unit by the effective date on the Notice.
- the current manager was named as an agent on the Application for Dispute Resolution which I find indicative of the interim manager's decision not to pursue ending the tenancy.
- I have been provided evidence that rent was collected for a period after the effective date of the Notice without evidence that the landlord accepted the rent for use and occupancy only.

I found the tenants' submissions to be straightforward and the tenants were able to provide detailed and prompt responses to my enquiries. Whereas, I found the landlord's submissions and responses to be rather unorganized, delayed and confusing. I also preferred the tenants' version of events that photographs were taken in December 2011 and not February 2012 as I found it unlikely the landlord would issue a Notice based on a foul smell in the hallway and visual observation of a detached smoke detector. Rather, it makes more sense to me that the photographs were taken in December 2011 which resulted in the issuance of a Notice to End Tenancy, as submitted by the tenants. Thus, I find the tenants' versions of events credible which leads me to accept their submission that they had cleaned up the unit for an inspection in February and then the interim manager agreed to withdraw the Notice and continue with the tenancy.

Finally, the landlord submitted on their Application for Dispute Resolution that the tenants did not comply with an Order of the fire inspector yet the landlord did not provide a copy of any such order.

Based upon everything presented to me today, I find, based on the balance of probabilities, that the interim manager and the tenants agreed to withdraw the Notice to End Tenancy dated December 16, 2011 and the Notice no longer of any effect. Therefore, I do not grant the landlord's application for an Order of Possession based upon that Notice and the landlord's application is dismissed.

As the parties were informed during the hearing, the landlord retains the right to inspect the unit in accordance with section 29 of the Act in order to determine whether the tenants are maintaining the unit in a manner that complies with the Act. For the tenants' information, during the hearing I quoted portions of section 32 and 47 of the Act that deal with maintaining reasonable health, safety, cleanliness and sanitary standards in a

rental unit. Should a subsequent inspection demonstrate there is a basis to end this tenancy for cause, the landlord is at liberty to issue another 1 Month Notice.

Conclusion

The landlord's application for an Order of Possession was dismissed as I was satisfied the Notice to End Tenancy dated December 16, 2011 had been withdrawn by the parties and the tenancy reinstated.

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: March 15, 2012.

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Residential Tenancy Branch