



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPC

Tenant: CNC, MNDC, OLC, RPP, OPT, AAT, FF, O

### Introduction

This hearing was convened by way of conference call in response to applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause, and the tenant has applied for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; for an order that the landlords return the tenant's personal property; for an Order of Possession of the rental unit or site; for an order allowing the tenant access to or from the unit or site for the tenant or the tenant's guests; and to recover the filing fee from the landlords for the cost of this application.

The named landlord attended the conference call hearing on behalf of the named landlord and as agent for the landlord company. The tenant also attended the hearing with an advocate assisting. The parties both gave affirmed testimony and evidentiary material in advance of the hearing, and were given the opportunity to cross examine each other on the evidence and testimony, all of which has been reviewed and is considered in this Decision.

The parties also provided testimony of having served each other with the Applications for Dispute Resolution, notice of hearing documents and evidence, and I am satisfied that the parties have been served in accordance with the *Residential Tenancy Act*.

During the course of the hearing the tenant withdrew the applications for a monetary order; for an order that the landlords comply with the *Act*, regulation or tenancy agreement; and for an order that the landlords return the tenant's personal property.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Are the landlords entitled to an Order of Possession for cause?

- Is the tenant entitled to an order cancelling a notice to end tenancy for cause?
- Is the tenant entitled to an Order of Possession of the rental unit?
- Is the tenant entitled to an order allowing access to or from the rental unit for the tenant or the tenant's guests?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on July 1, 2010 and the tenant still resides in the rental unit. Rent in the amount of \$375.00 per month is payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. On June 29, 2010 the landlord collected a security deposit from the tenant in the amount of \$187.50 which is still held in trust by the landlord. The rental unit is an apartment-style unit in a complex that houses about 150 rental units on 4 floors. The rental unit is on the 2<sup>nd</sup> floor.

The landlord also testified that a building inspection was scheduled with each tenant for April 18, 2011. When he arrived at this rental unit and opened the door, the landlord could not access the rental unit due to clutter. The rental unit was full of newspapers and other belongings. The landlord advised the tenant that the rental unit was a hazard and asked the tenant to have it cleaned by June 9, 2011. When the landlord attended the rental unit again on June 9, 2011 there was no change to its condition. The tenant told the landlord at that time that he had medical issues and had no access to a truck. The landlord told the tenant to do the best that he could and offered help, but the tenant is independent and wanted to do it on his own.

On June 28, 2011 a major flooding occurred on the third floor of the building which travelled to the second floor through baseboard heaters in the units. The landlord and contractor attempted to find the shut-off valve and were not sure of which suite it was located in. The building is a U-shape, and one shut-off valve covers 4 or 5 suites. The plumber wanted to check all suites on the second floor, and rather than turning off water to the entire building, the landlord and plumber wanted to shut off sections of the building but could not get into the tenant's unit due to its state. The shut-off valve was not located and the water was turned off for the entire building, and the leak was dealt with.

The landlord put the tenant in touch with an outreach task force for hoarders. When the worker arrived, the tenant said he wanted to take care of the issue on his own and denied the worker's help.

The landlord issued a notice to end tenancy on July 30, 2012 and provided a copy for this hearing. The notice was served on the tenant personally on July 30, 2012 by the

landlord's agent and contains an expected date of vacancy of September 1, 2012. The reasons for issuing the notice are stated to be, on page 2 of the form:

Tenant or a person permitted on the property by the tenant has:

Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

Damage the landlord's property;

Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;

Jeopardized a lawful right or interest of another occupant or the landlord

Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

When asked about the illegal activity alleged against the tenant, the landlord's agent testified that the state of the rental unit is likely to damage the landlord's property and has adversely affected other occupants and jeopardized lawful rights of other occupants, although the landlord does not allege illegal activity in the criminal sense. Mice attracted to the rental unit have eaten through walls and have caused a concern for other residents and a risk to the landlord's property.

The landlord also called a Property Use Inspector who made an order on September 7, 2011. The rental unit then contained a strong odour of animal feces which the landlord believes was from mice. The order issued by the Property Use Inspector was that the tenant had to clean the rental unit by September 21, 2011. The landlord witnessed the Inspector post the notice to the door of the rental unit.

A Notice of Violation was issued on October 11, 2011 as well. The landlord testified that he had offered to have the work done in the rental unit at the expense of the landlord, and that the landlord just needed a storage facility key from the tenant, and the tenant had already secured a storage facility. The landlord continued to work with the tenant, but the tenant felt it more important for him to do it on his own. The tenant obtained a friend's truck and moved some items to the storage facility, but an inspection again showed little change.

In mid-June, 2012 the Inspector felt that a safety risk was still there, and a Hoarding Task Force offered the tenant support and help.

On July 17, 2012 the assistant Fire Chief made a Do Not Occupy order after opening the door to the rental unit. The order was posted the same day to the door of the rental unit, and the tenant later told the landlord that he had received it. The landlord offered the tenant shelter options, but the tenant declined. The tenant could not access the rental unit and spent about a week sleeping in common areas of the rental building. The tenant asked for access to the rental unit which was declined until a plan was in place. From July 24 through 26, the Task Force and tenant worked in the rental unit but the work has still not been finished and it is still unsafe due to too many of the tenant's belongings remaining in the rental unit. The tenant has been given access after August 8, 2012 but the landlord does not believe the tenant is sleeping in the rental unit yet.

During cross examination, the landlord was asked if the tenant was told that he could not use the dumpster located at the rental complex, to which the landlord replied that on certain days it was not available, but the tenant was told that and what days of the week were acceptable due to the garbage pick-up schedules.

The landlord further testified that the rental unit still needs more work, and as a result, pest control cannot be completed. Once the landlord gave the tenant access again to the rental unit, the workers backed off.

The tenant testified that 90% of the items have been removed and are now in storage or have been disposed of. The landlord offered another suite but seemed to be frustrated and retracted that offer. The tenant had a storage locker but it was too small so a bigger one was retained. When asked if the tenant is willing to work with the Hoarding Task Force, the tenant replied that there is no need and there is ample access, he now has access to a truck, and not much more to do. The tenant went to see inspectors yesterday but they weren't at City Hall. The tenant intended to ask them to re-inspect the rental unit and the storage unit to see the progress made. The landlord was at the rental unit today and saw empty packing boxes and pointed out a full shelf in a closet. The tenant stated the items are clothing which the tenant offered to move, and the bathroom and bedroom are both full of packing bags.

The tenant also stated that he feels strongly that it is imperative that workers and/or inspectors re-inspect the rental unit. Since getting access to his rental unit again, the tenant has been there every day and every night.

### Analysis

I have reviewed the notice to end tenancy issued by the landlord dated July 30, 2012. I find that the approved form has been utilized and it contains information relative to the testimony and evidence provided for this hearing. I do not accept that the tenant has engaged in any illegal activity that may damage property, etc., however I do find that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and has put the landlord's property at significant risk.

The notice contains an expected date of vacancy of September 1, 2012, and the *Residential Tenancy Act* states that the notice must end the tenancy effective on a date that is not earlier than one month after the date the notice is received by the tenant, and must be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement. I accept the undisputed testimony of the landlord that the tenant was served personally with the notice on July 30, 2012. The notice before me shows that it is effective the same day rent is payable under the tenancy agreement, however, Section 53 of the *Act* states that: "...if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement (a) that complies with the required notice period, or (b) if the landlord gives a longer notice period, that complies with that longer notice period." In other words, the landlord ought to have chosen August 31, 2012 to be the effective date, but by choosing a date after August 31, 2012, the landlord is bound by that effective date and cannot request an Order of Possession prior to the effective date written in the notice.

I further find that the tenant disputed the notice within the time (10 days) provided under the *Act*. I also accept the testimony of the tenant that he has been working day and night to correct the situation, however at the time the notice to end tenancy was issued, the same risk continued to be an issue, and from July 24 through 26, the Task Force and tenant worked in the rental unit but the work has still not been finished and it is still unsafe due to too many of the tenant's belongings remaining in the rental unit. The tenant was told during a building inspection on April 18, 2011 that the state of the rental unit was not acceptable, and continued offers to assist and support the tenant were not accepted. The landlord has been dealing with this matter since that building inspection, and I find that the landlord has satisfied the requirements for obtaining an Order of Possession.

Since the tenant has not been successful with the tenant's application to cancel the notice to end tenancy, I find it necessary to dismiss the balance of the tenant's application.

### Conclusion

For the reasons set out above, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn by the tenant.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed as withdrawn by the tenant.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed as withdrawn.

The tenant's applications for an order cancelling the notice to end tenancy, for an Order of Possession of the rental unit, and for an order allowing the tenant access to or from the unit or site for the tenant or the tenant's guests are all dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenancy.

This order is final and binding on the parties and may be enforced.

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: September 13, 2012.

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Residential Tenancy Branch