



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPC, MND, FF  
Tenant: CNC, FF

### 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; for a monetary order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for cause and to recover the filing fee from the landlords for the cost of the application.

One of the landlords and the tenant attended the conference call hearing, and both gave affirmed testimony. The landlords also provided evidentiary material prior to the commencement of the hearing and the parties 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. No issues were raised respecting service or delivery of documents or evidence.

### Issue(s) to be Decided

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

Are the landlords entitled to a monetary order for damage to the unit, site or property?

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

### Background and Evidence

The parties agree that this month-to-month tenancy began on July 1, 2011 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 per month is payable in advance on the 1<sup>st</sup> day of each month, although there is no written tenancy agreement. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlords.

The landlord testified that a 1 Month Notice to End Tenancy was served on the tenant on September 5, 2012 by posting it to the door of the rental unit, which contained an

expected date of vacancy of October 31, 2012. A copy of the notice was not provided for this hearing.

The landlord further testified that the tenant has been repeatedly late paying rent and provided copies of notices to end tenancy for unpaid rent or utilities that were served on the tenant in August and September, 2012. The tenant has been late with rent on 10 occasions over a 15 month period. Further, rent for the month of October has not yet been paid and the landlord has served the tenant with another notice to end tenancy but a copy of that notice has not been provided. The landlords also provided a copy of a spreadsheet showing the dates that rent monies were deposited to the landlords' bank account.

The landlord further testified that the rental unit is a basement suite in a house and the landlords reside in the upper unit. The tenant's vehicle has dripped oil onto the driveway, and the landlords have spoken to the tenant about repairing the damage caused by the leak. The landlords also requested in writing on August 19, 2012 that the tenant complete the repair by September 4, 2012 and asked the tenant to refrain from parking on the driveway until it is repaired and is no longer leaking fluids. The tenant did not complete the repair and the landlords claim \$145.45 for completing the repairs. A receipt for oil lift and flubber dust for \$45.11 has been provided as well as a receipt in the amount of \$12.30 for jointing sand which the landlord testified was required after cleaning the spills. The repair had to be repeated due to the amount of leakage and the landlords provided another receipt in the amount of \$16.79 for more flubber dust. The receipts total \$74.20 and the landlords claim \$71.25 as labour for completing the repairs, being \$15.00 per hour for 4.75 hours.

The tenant testified that the landlord has not proven late rent but has only submitted a bank statement showing when the money was deposited, not when it was received.

The tenant also disagrees that the landlord is entitled to labour for completing the repair but did not dispute that the repair was required due to leakage from the tenant's vehicle.

### Analysis

The *Residential Tenancy Act* states that a landlord may issue a notice to end tenancy if a tenant is repeatedly late paying the rent, and the landlord must use the approved form. A tenant must dispute a notice to end tenancy for cause within 10 days of the date the tenant was served with the notice. If the tenant fails to do so, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. In this case, the tenant filed the application for dispute resolution on September 10, 2012, which is within the 10 days provided under the *Act*. The landlords

have not provided a copy of the notice to end tenancy, and as such, I cannot rule on whether or not the notice served on the tenant is in the approved form or contains sufficient information to uphold the notice. Therefore, the landlords' application for an Order of Possession cannot succeed.

The landlord testified that another notice to end tenancy has been issued, which is not before me, and this Decision is not in respect of that notice. If the tenant fails to dispute that notice as required under the *Act*, the landlord will be at liberty to re-apply for an Order of Possession.

With respect to the monetary order, I find that the tenant has not disputed that the damage was caused by the tenant's motor vehicle and the landlord has proven a claim in the amount of \$74.20 for supplies to complete the repairs. I further find that the landlords' claim for \$71.25 for the landlord's time in completing the repair is reasonable. The tenant was provided with notice requesting that the tenant complete the repairs both verbally and in writing, but the tenant failed to do so. Therefore, I find that the landlords are entitled to a monetary order for \$145.45.

Since both parties have been partially successful with the application, I decline to order that either party recover the filing fees.

### Conclusion

For the reasons set out above, the landlords' application for an Order of Possession for cause is hereby dismissed without leave to reapply, and the notice to end tenancy effective October 31, 2012 is hereby cancelled.

I hereby grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$145.45.

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: October 15, 2012.

---

Residential Tenancy Branch