



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      opr, cnr, mndc, olc

### Introduction

The tenants have applied for an order to cancel a 10 day Notice to End Tenancy for unpaid rent, and for a monetary order and an order that the landlord comply with the Residential Tenancy Act. The landlord requests an Order of Possession.

### Issues to Be Decided

- Is the Notice to End Tenancy served upon the tenants effective to end this tenancy, and entitle the landlord to an Order of Possession?
- Is there money due and payable by the landlord to the tenants?

### Background and Evidence

This tenancy began in May, 2012. Rent is currently \$875.00 per month, and as of January 31, 2015, the tenants are in arrears in the sum of \$1,495.00. The tenants plan to move out within a day or so, and consent to an Order of Possession being issued to the landlord.

The tenants also seek a monetary order of \$663.84 as against the landlord. This sum apparently represents the lost wages their son has incurred due to missing work because he could not sleep as a result of noise from the tenants above. The tenants complained to the landlord, but the noise continued.

The landlord acknowledges receiving some complains about noise, and took steps such as calling the upper tenants and giving them a written notice. He requested further specifics from the tenants about the noise disturbances, as he was getting conflicting stories about what was actually happening. The tenants did not provide much detail, but rather their calls to him became increasing hostile.

### Analysis

In terms of the issue of possession of the premises by consent of both parties and pursuant to Section 55 of the Residential Tenancy Act, I issue an Order of Possession, effective 48 hours following service upon the tenants. Should the tenants fail to comply

with this Order, the landlord may register the Order with the Supreme Court for enforcement. I note that the landlord filed no monetary claim.

The tenants' monetary request is based upon the tenants' allegations that the landlord was not sufficiently vigilant in taking steps to evict the upper tenants. This claim however is not sufficiently supported. For example, the tenants have not provided me with supporting evidence such as police reports, copies of their written complaints to the landlord, a journal of the noise disruptions in question, or the like. Further, the tenants have not submitted documentary evidence from their son's employer to confirm that he missed work, or how much work was missed, or what the value of any such lost work was. I also note that landlord's submission was that he did not receive sufficient supporting details from the tenants to support him evicting the upper tenants. I further note that some steps were taken by the landlord in terms of giving notice to the upper tenants about noise complaints. While it may be that the landlord could have done more to ameliorate the noise problem, I find that the tenants have not proven their monetary claim as against the landlord. Their claim that the landlord comply with the Act in the future becomes moot, given that they are moving out in a matter of days. The tenants' claims are therefore all dismissed.

#### Conclusion

An Order of Possession, effective 48 hours following service upon the tenants, is issued to the landlord. All other claims are 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 03, 2015

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Residential Tenancy Branch

