



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, MNDC, OLC, PSF, PRR, LRE, OPT, AAT, LAT, RR, OPC, FF

### Introduction

This hearing dealt with two related applications. One is the landlord's application for an order of possession based upon a 1 Month Notice to End Tenancy for Cause. The other is the tenant's application for orders setting aside the notice to end tenancy and for every other form of relief listed on the application for dispute resolution form. Although served with the landlord's application for dispute resolution and notice of hearing by registered mail and being the applicant on the other application, the tenant did not appear at the hearing.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession and, if so, upon what terms?

### Background and Evidence

The landlord and tenant are father and son. The landlord has a police officer for over thirty years. The tenant is 26 years old and has had some difficulty with the law. Prior to this tenancy commencing the tenant had been serving a sentence for robbery with an imitation hand gun. The tenant has also had difficulty with drugs.

The landlord has a one bedroom suite in the lower level of his home and it was agreed that the tenant would move into the suite. The month-to-month tenancy commenced April 7, 2013. The monthly rent of \$250.00 is significantly below market value and is due on the first day of the month. There is no written tenancy agreement and the landlord did not ask for a security deposit.

On November 4, 2014, in the early hours of the morning, while the landlord was working out of town, his residence was broken into by two men. The tenant confronted the two men and was stabbed in the side by one of them. When the tenant confronted the thieves they were in the process of stealing the landlord's electronic equipment and liquor. They did make away with a substantial amount of cash.

On November 10 the landlord had a security system installed in his home, including the suite.

The tenant was not very careful about setting the alarm system when he left the rental unit. There were communications between the landlord and the tenant on this topic. There were a

number of occasions when the landlord found that the windows of the suite had been left open, or the door left unlocked, or the alarm system left unarmed.

On December 31 the tenant sent the landlord a text that stated: "Having an alarm system is an extra measure of security and is not mandatory be set. I will set it if I am going to be gone for extended periods of time, however daily errands etc. I will not as I have a very busy schedule and do not have all the time to do so."

The landlord testified that the control panel is beside the exterior door of the suite and arming the system involves pushing one button.

On the evening of December 31 the landlord came home in an unmarked police car. The tenant was in his car with his girlfriend and did not notice the landlord's arrival. The tenant had his head down and the interior light on. Based upon his years of experience as a police officer, including drug enforcement, and the tenant's personal history, the landlord was suspicious.

The landlord went to the car and opened the door. The tenant had a blue CD type case on his lap and there was a white powder on it. He was holding a credit card in his right hand and appeared to be "cutting" a drug. The landlord asked the tenant for the mail key, the tenant gave him the key and the landlord went into the house.

Later that evening the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. Of the reasons listed on the notice the two that are relevant to this decision are:

- Tenant . . . has put the landlord's property at significant risk.
- Tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant or the landlord.

On January 19 the landlord was advised by his superior that another police service had executed a search warrant in the rental unit. The police seized a number of items that they claimed had been taken in a home invasion on December 25. The tenant was arrested, charged and released on bail.

The landlord also gave evidence of some marijuana use by the tenant in January.

The tenant paid the January rent on December 31 but has not paid the February rent.

#### Analysis

Based upon the pattern of events I am satisfied that the landlord has established both grounds stated on the notice to end tenancy.

The notice to end tenancy was dated January 1, 2015, but both the tenant's application for dispute resolution and the landlord's evidence state that it was served on December 31, 2014. The effective date of the notice is stated to be January 31, 2015.

Section 47(2) of the *Residential Tenancy Act* states that a 1 Month Notice to End Tenancy for Cause must end the tenancy on a date that is:

- a) "not earlier than one month after the date the notice is received; and
- b) The day before the day in the month. . .that rent is payable under the tenancy agreement." (emphasis added)

Although the notice was dated January 1 it was actually received on December 31. The effective date stated on the notice is both more than one month after the notice was received and is the day before the day that the rent was due. Accordingly, this tenancy ended on January 31, 2015. The landlord is entitled to an order of possession effective two days after service on the tenant.

As the landlord was successful on his application he is entitled to reimbursement from the tenant of the \$50.00 fee he paid to file the application. A monetary order in that amount is granted to the landlord.

As the tenant did not appear his claims are dismissed in full, without leave to re-apply.

#### Conclusion

- a) An order of possession effective two days after service on the tenant has been granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b) A monetary order in the amount of \$50.00 has been granted to the landlord. If necessary, this order may be filed in Small Claims Court and enforced as an order of that court.
- c) All claims by the tenant are dismissed, without leave to re-apply.

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 05, 2015

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Residential Tenancy Branch

