



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF

### Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession cause and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing..

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

### Background and Evidence

The parties agree that this month to month tenancy started on August 04, 2012. This is shared accommodation and the tenant shared this unit with others tenants' who each had their own room. The tenants rent for this unit is \$500.00 per month and is due on the first day of each month. The tenant paid a security deposit of \$250.00 on August 04, 2012.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on September 09, 2012 by posting the Notice to the tenant's door. The

landlord has provided a copy of the Notice in evidence and this shows that the Notice has an effective date of October 13, 2012 and gives the following reasons to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
  - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) Put the landlord's property at significant risk;
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
  - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) Jeopardized a lawful right or interest of another occupant or the landlord.

The landlord testifies that the tenant or the tenant's guests have caused disturbances which have resulted in the other tenants sharing this unit to give notice and move out. The landlord testifies that the tenant's guests have been fighting outside yelling and screaming and broke a window in the unit. Another of the tenant's guests has been staying in the tenant's room when the tenancy agreement states this is for one person occupancy. The landlord testifies that this female friend of the tenant has been using the shared laundry facilities and when challenged about this by the female landlord the guest of the tenant threatened to burn down the landlords house. The landlord testifies that she called the police and was told to call them again if the landlord saw this person at the property.

The landlord testifies that they have also had complaints about the tenant or his guest smoking marijuana but although the landlord has smelt this illegal substance they cannot confirm it is smoked by the tenant.

The landlords witness is a tenant living in the unit upstairs. The witness testifies that she has been disturbed by this tenants visitors downstairs and on one occasion was significantly disturbed by two of the tenants guests fighting yelling and screaming at each other outside. The witness testifies she went to speak to these people and was told they were friends of the tenants. The witness testifies she told them to leave but when she returned upstairs they started fighting again. The witness testifies she went back outside and asked them to leave again and the female went into the tenants unit. The witness testifies that early one morning she heard a female screaming at the tenant to get off her but the witness testifies she was too scared to go downstairs again.

The witness testifies that the day after on November 02, 2012 she was doing laundry in the shared laundry room and when she went back down to the laundry room and found a female friend of the tenants was doing laundry in the tenants' laundry room. This female person had put the witnesses laundry into the dryer and when the witness told this female she was not allowed to do her laundry there because she is not a tenant the female told the witness she would have her deported.

The tenant declines to cross examine this witness.

The tenant disputes the landlords claim and testifies he does not have friends over late at night and any friends are gone by 11.00 p.m. the tenant disputes that he smokes marijuana and disputes that he gave this female friend permission to use the laundry. The tenant testifies that as the laundry room is outside and does not have a door this female friend must have just come to use the laundry because she does not have one in her unit. The tenant disputes that he or his guests have caused disturbances to other

tenants but agrees his female friend and a male person were fighting outside the unit and did break a window in the tenants unit.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find that the tenant did not dispute the Notice within the 10 days allowed as indicated on page two of the One Month Notice to End Tenancy pursuant to s. 47(4) of the *Act*. The Notice was served to the tenant by posting it to the tenant's door on September 09, 2012 this was deemed to have been received three days later on September 12, 2012. Therefore the tenant had until September 22, 2012 to dispute the Notice.

As the tenant did not dispute the Notice the tenant is considered to have accepted the Notice pursuant to s. 47(5) of the *Act*. Under s. 90 of the *Act*, the One Month Notice to End Tenancy for Cause must give one clear months notice to end the tenancy. Therefore the effective date to end the tenancy is amended to October 31, 2012 rather than October 13, 2012 pursuant to s. 53 of the *Act*.

Consequently, the landlord is entitled to an Order of Possession pursuant to s. 55 of the *Act* effective two days after service on the tenant.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **Two Days after service on the tenant**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$250.00 leaving a balance \$200.00 which must be returned to the tenant or otherwise dealt with in compliance with section 38 of the *Act*.

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: November 20, 2012.

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Residential Tenancy Branch