



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mainstreet Equity Corp.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, OBB, FF

### Introduction

This hearing was convened by way of conference call in response to the landlords application for an Order of Possession for cause and because the tenant breached an agreement with the landlord. The landlord also seeks to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 18, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for cause?
- Is the landlord entitled to an Order of Possession as the tenant breached an agreement with the landlord?

### Background and Evidence

The parties agree that this tenancy started on March 05, 2012 for a fixed term that is due to end on March 31, 2013. Rent for this unit is \$900.00 per month however the

tenant received a \$75.00 rent incentive for the term of the fixed term lease. The tenant paid a security deposit of \$450.00 on March 05, 2012 and a pet deposit of \$200.00 on April 05, 2012.

The landlord's agent testifies that the tenant has been repeatedly late paying rent. The tenant has only paid rent on time twice in the last 12 month period. The landlord's agent testifies that the tenant has been given four 10 Day Notices to End Tenancy for unpaid rent and numerous late payment reminders. The landlord has provided copies of these in evidence.

The landlord's agent testifies that the tenant has also breached an agreement with the landlord concerning the care of the tenant's dog. The landlord's agent testifies that the tenants living in the unit below this tenant have complained that the tenant has allowed their dog to urinate on the tenant's balcony which then drips down onto the balcony below. The landlord's agent testifies that they investigated this matter and were told by the tenant that the roof was leaking which caused water to drip onto the balcony below. The landlord's agent testifies that the roof leak was looked at and the vents were all cleaned. The downstairs tenants were transferred to a different unit and the new tenants who moved into the unit below this tenant also started to complain that the tenant allowed her dog to urinate on the tenants balcony and this urine dripped onto the balcony below.

The landlords agent testifies that the tenant signed an agreement at the start of the tenancy with regard to the proper care of pets and by allowing the tenants dog to urinate on the balcony the tenant has breached the agreement and has significantly interfered with and disturbed the tenants below and has seriously jeopardized the health and safety or lawful right of the tenants residing in the unit below.

The landlord's agent testifies that the tenant was served a One Months Notice to End Tenancy on December 27, 2012. This Notice was posted to the tenants door on that

date by the landlords agent and has an effective date of January 31, 2013. The reasons given on the Notice are as follows:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *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.*

The landlord's agent requests an Order of Possession effective March 31, 2013.

The tenant disputes the landlords claim and testifies that the previous agent for the landlord knew that the tenant would pay rent late each month as the tenant testifies that she had explained to the landlord's agent that her roommate did not get paid by the first day of the month. The tenant testifies that as they did not move into the unit until March 05, 2012 the rent should be due on the 5<sup>th</sup> day of each month and not the 1<sup>st</sup> day. The tenant testifies that they had to cancel the preauthorised payment set up for the rent because someone tried to get additional money from the tenant's bank account the first month.

The tenant disputes the landlords claim that the tenant has allowed her dog to urinate from the balcony. The tenant testifies that the tenant gave her son heck for letting the dog urinate on the balcony. The tenant later revised this statement and testifies that she gave her son heck by asking her son if he had let the dog urinate on the balcony. But her son had said he had not let the dog out on the balcony. The tenant testifies that she has provided a video of the balcony and the roof showing the roof leaking. The tenant agrees this video was not sent until March 08, 2013 and is not available for the hearing today. The tenant disputes the landlord's agent claim that the roof has been repaired

and states that the tenant has to keep buckets on the balcony to collect water from the leaking roof.

### Analysis

When a tenant is served with a One Month Notice to End Tenancy the tenant is provided with information on page two of that Notice about how the tenant can dispute the Notice by filing an application for Dispute Resolution. The landlord has provided a copy of this Notice served upon the tenant on December 27, 2012. The tenant has not disputed the One Month Notice within the 10 allowable days as indicated on page two of the Notice.

I am not required to determine if the grounds on the Notice are justified only that the tenant is conclusively presumed to have accepted the end of the tenancy. Even if the tenant had disputed the Notice in the 10 day time frame the One Month Notice would still be upheld on the grounds that the tenant is repeatedly late paying rent.

Consequently, as the tenant did not file an application to dispute the Notice the tenant is presumed to have accepted the end of the tenancy pursuant to s. 47 (5) of the *Act* and the landlord is therefore entitled to an Order of Possession pursuant to s. 55 of the *Act*.

### Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **On March 31, 2013**. 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 the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$450.00 leaving a balance \$400.00 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: March 11, 2013

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Residential Tenancy Branch

