



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

**CNC, OPC, MND, MNSD, FF**

### Introduction

This was a cross-application hearing.

The tenant applied to cancel a 1 month Notice to end tenancy for cause issued on March 2, 2014 and to recover the filing fee costs from the landlord.

The landlord applied requesting an Order of possession based on the 1 month Notice ending tenancy for cause, compensation for damage to the rental unit, to retain the security deposit and to recover the filing fee costs from the tenant.

### Preliminary Matters

The landlord claimed the cost of damage to the unit in the sum of \$200.00 and to retain the security deposit. The main issue to be dealt with during this hearing was the Notice to End Tenancy. For disputes to be combined on an application they must be related. As not all the claims on the landlord's application were sufficiently related to the main issue, in accordance with section 2.3 of the Rule of Procedure, I dismissed the unrelated matters. The landlord has leave to reapply requesting compensation for damage to the rental unit and to claim against the security deposit, in accordance with the legislation.

At the start of the hearing the landlord indicated that an Order of possession was being sought in relation to the landlord's intent to reside in the rental unit. The landlord had made a notation on the application that he would like the damages to the house repaired so he could move in. There was no evidence before me that a Notice ending tenancy for landlord's use had been issued. The agent stated that the landlord should be able to end the tenancy for his own use. As the landlord had not applied requesting an Order of possession based on a Notice ending tenancy for landlord's use and, as there was no evidence that the proper Notice had been issued, I proceeded to hear matters related to the Notice ending tenancy for cause.

### Issue(s) to be Decided

Should the 1 month Notice to end tenancy for cause issued on March 2, 104 be cancelled or is the landlord entitled to an Order of possession?

Is either party entitled to filing fee costs?

### Background and Evidence

The parties agreed that the tenancy commenced on April 12, 2013, rent is \$2,000.00 per month, due on the first day of each month. A copy of the tenancy agreement was supplied as evidence.

The landlord and the tenant agreed that a 1 month Notice to end tenancy for cause was served on the tenant indicating that the tenant was required to vacate the rental unit April 15, 2014.

The reasons stated for the Notice to End Tenancy were that the tenant has been repeatedly late paying rent and engaged in illegal activity that has damaged the landlord's property.

The landlord confirmed that no illegal activity is alleged; that reason on the Notice was selected in error.

The landlord provided copies of text messages; one sent by the tenant on January 1, indicating rent might be late. A 2<sup>nd</sup> message sent January 27 indicated that the tenant might need an extra week to pay rent that was going to be due.

The landlord could not provide the dates rent was actually paid late, but said the messages proved the tenant was late. The landlord did not supply any submission in relation to further late payments.

The tenant said that one of the text messages was sent in 2013.

The tenant said he pays rent by cash and has not received a receipt since the 2<sup>nd</sup> month of the tenancy. The tenant said he could pay rent via post-dated cheques. When rent is due the tenant and landlord meet so that payment can be completed.

The landlord pointed to clause 10 of the signed tenancy agreement which indicates that either party could terminate the tenancy with not less than one month's notice to the other. I explained that a landlord may end a tenancy in accordance with the legislation. Section 5 of the Act prohibits any contracting out of the legislation.

### Analysis

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has been repeatedly late paying rent.

Residential Tenancy Branch policy suggests that in order to end a tenancy for the reason of repeated late rent payments there must be at least 3 late payments in the recent past. As the landlord supplied evidence of 2 suspected late payments and, in the absence of any dates late payments were in fact made, I find that the landlord has failed to prove that rent has been late at all.

Therefore, I find that the 1 month Notice to end tenancy for cause issued on March 2, 2014 is of no force and effect and that the landlord's application is dismissed. The tenancy will continue until it is ended in accordance with the Act.

I note that section 26.2 of the Act requires a landlord to issue receipts for any rent payments made in cash. If receipts are not issued the tenant is at liberty to supply the landlord with post-dated cheques, which will ensure rent is paid on time and that a record of payment is created.

As the tenant's application has merit I find that the tenant is entitled to deduct the \$50.00 filing fee from the next month's rent.

### Conclusion

The 1 month Notice to end tenancy for cause issued on March 2, 2014 is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

The landlord's application requesting an Order of possession is dismissed.

The tenant is entitled to deduct the \$50.00 filing fee from the next month's rent due.

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: April 24, 2014

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Residential Tenancy Branch