



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: CNC, MNDC, RP, FF

### Introduction

This hearing dealt with the tenant's application to cancel a *1 Month Notice to End Tenancy for Cause* (the Notice), a Monetary Order for damage or loss under the Act, regulation or tenancy agreement, an Order to have the landlord make repairs and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to other party's submissions.

### Issue(s) to be Decided

1. Whether there are grounds to cancel the Notice.
2. Whether repairs are required to the rental unit or residential property, and if so, the appropriate Order to the landlord to make repairs.
3. Whether the tenant has suffered a loss of quiet enjoyment of the rental unit due to the landlord's violation of the Act, regulation or tenancy agreement by the landlord and if so, the tenant's entitlement to compensation.
4. Award of the filing fee.

### Background and Evidence

The parties were in agreement to the following relevant facts. The tenancy began December 1, 2007. Monthly rent is \$725.00. The rental unit is located in a building constructed in 1911 and the walls are relatively soft plaster. The tenant painted the walls in her rental unit bold green and blue colours without consent of the manager. In July, the landlord verbally instructed the tenant to re-paint the rental unit and on September 25, 2008 the tenant was given a letter advising her that she was being

evicted because she had failed to re-paint the rental unit. The tenancy agreement prohibits the tenant from painting the rental unit unless the manager agrees in writing.

Also on September 25, 2008, the Notice was served upon the tenant, with an effective date of October 31, 2008, and indicates the reason the tenancy is ending is because the tenant has:

- allowed an unreasonable number of occupants in the unit;
- significantly interfered with or unreasonably disturbed another occupant or the landlord; and,
- caused extraordinary damage to the unit.

With respect to the unreasonable number of occupants in the unit, the landlord testified that he has since been satisfied that the tenant's boyfriend does not live in the rental unit and will withdraw for that reason.

With respect to the significant interference or disturbance of other occupants or the landlord, the landlord explained that the tenant approached the other tenants in the building in order to request their signature on a letter she was writing to the landlord with respect to a foul odour in the building. The landlord stated that other tenants told him they felt pressured by the tenant to sign the tenant's letter. The landlord also explained that the tenant frequently called the landlords on their cell phones in order to complain about the odour in the building.

The extraordinary damage to the unit relates to the bold colours the tenant painted the walls.

The tenant disputed that she harassed any other tenants and testified that she called the landlord less than once per week to complain about the odour. The tenant

explained that the odour is worse at certain times of the day and she wanted the landlord to come to the property at those times, but the landlord would not attend at those times, thus necessitating her need to keep calling the landlords.

The tenant testified that she acknowledges she breached the tenancy agreement by painting the rental unit without permission and offered to repaint the unit before she vacates. The landlord was not satisfied with the offer and testified that the unit needs to be painted in neutral colours when he shows the rental unit to prospective tenants.

The tenant's claim for compensation relates to the loss of enjoyment of her rental unit due to an alleged foul odour that emits from either the heating vents or the plumbing. Initially, the tenant pointed to the source of the odour as coming from the heating vents and the possibility a rodent died in the ducting. However, when it was suggested that a possible remedy be the vacuuming of the heating ducts, the tenant suggested the odour was plumbing related as the odour is worst in her bathroom and in the evening when other occupants are home. At times the odour is so bad the tenant has had to leave the rental unit for unspecified periods of time. The tenant complained to the landlord about the odour, in writing, by way of a letter dated August 13, 2008, which was received by the landlords on August 19, 2008.

The landlord testified that he attends the property on a daily basis and has never detected a foul odour; however, he has taken steps to address possible causes such as having the carpets steam cleaned. The landlord also testified that the furnace and ducting was professionally vacuumed out last fall and does not believe any rodent could have accessed the ducting and died. The landlord pointed out that he has managed the building for approximately 20 years and allegations of a foul odour have never been raised by a tenant before, inferring the tenant is just seeking monetary gain from this claim.

### Analysis

Upon hearing testimony of the parties, I do not find that the tenant significantly interfered with or unreasonably disturbed other occupants or the landlord. While it is not disputed that the tenant approached other occupants with respect to signing a letter addressed to the landlord, the landlord has not satisfied me that the other occupants were so significantly disturbed that the tenant deserves to be evicted. Furthermore, a landlord has an obligation to respond to tenant complaints and I am satisfied that the frequent complaints to the landlords were necessitated by a foul odour being detected in the evenings when the landlord was not present at the building. Therefore, I do not find the tenant significantly disturbed the landlord in requesting attention to an issue related to the maintenance of the rental property.

I find the tenant breached the tenancy agreement when she painted the rental unit; however, I do not find sufficient evidence that she damaged the rental unit. Although the tenant has breached the tenancy agreement, she was given written notification of the breach on September 25, 2008, the same day she was served with the Notice. Therefore, she was not given a reasonable amount of time to correct the breach, once notified in writing, before the landlord issued a Notice to End Tenancy. I find the landlord has not established sufficient reason to ending the tenancy for damages or a material breach that was not corrected within a reasonable amount of time since the written notice to correct the breach was given the same day as the Notice to End Tenancy.

In light of the above, I set aside and cancel the Notice issued, with the effect that this tenancy shall continue. However, as I am satisfied that the tenant has breached the tenancy agreement, this decision serves as written notice to the tenant to return the colour of the rental unit walls back to the same colour they were at the beginning of her tenancy and incur the costs to do so. The tenant will be afforded a reasonable amount of time to repaint the walls. The landlord was agreeable to a deadline of November 30,

2008 in order to provide the tenant adequate time to repainting the walls. **I, hereby ORDER the tenant to repaint the walls the same colour they were at the beginning of the tenancy, in a professional-like manner, no later than November 30, 2008.**

If the tenant fails to comply with this ORDER, the landlord may issue another Notice to End Tenancy and the tenant may be liable to compensate the landlord for damages or loss incurred by the landlord.

With respect to the alleged odour in the rental unit, the parties were unable to satisfy me of the cause of the odour. From the evidence before me, including the letter signed by most other tenants in the building, I am satisfied that there is some sort of odour in the building. While the landlord was of the position that the tenant coerced the other tenants to sign the letter, I find the landlord's position unsupported by sufficient evidence. I find it unlikely that 10 other tenants besides the tenant would sign the document against their will if there was not an odour present. Therefore, I accept the tenant's position that there is an odour in the building and that it is worse at different times of the day. The landlord has an obligation to ensure that the rental unit complies with health, safety and building laws and that the rental unit is fit for occupancy. A landlord also has the duty to investigate complaints that may violate health, safety and building laws. **Therefore, I ORDER, the landlord or a delegate for the landlord to attend the property upon receiving a complaint of a strong foul odour from the tenant, even if the complaint is in the evening.**

Although I am satisfied there is an odour in the rental unit and the building, I am not satisfied that the odour is so offensive the unit is unfit for occupancy or that the odour is necessarily indicative of a violation of the health, safety or building laws. However, the reference to plumbing odours causes me sufficient concern to find that the landlords need to investigate the plumbing system to ensure sewer, sewer gases, mould or other toxins are being properly eliminated from the building since these issues are known

health and safety risks. **Therefore, I, hereby, ORDER the landlord to have the plumbing system professionally inspected and obtain a report from the plumber. The landlord must provide a copy of the report to the tenant. The landlord must comply with this ORDER by November 30, 2008.**

As the cause of the odour is not known at this time, I cannot conclude that the landlord has violated any health, safety or building laws or that the rental unit is unfit for occupancy. In order for the tenant to be successful with a claim for compensation with respect to the odour problem, I need to be satisfied that the landlord has violated the Act or the aforementioned laws. Therefore, further investigation needs to be conducted to determine the cause of the odour before an award for compensation can be considered further. That is why I dismiss the tenant's claim for compensation with leave to reapply.

As the tenant was successful with her application to have the Notice canceled and the landlord has been ordered to further investigate the cause of the alleged odour, I award the cost of the filing fee to the tenant. The tenant may deduct \$50.00 for a subsequent month's rent in satisfaction of this award and the landlord must consider the rent to be paid in full.

#### Conclusion

The Notice to End Tenancy is set aside with the effect that this tenancy shall continue. The tenant is ORDERED to repaint the rental unit walls the same colour they were when the tenancy began and do so no later than November 30, 2008. The tenant's claim for compensation is dismissed with leave to reapply.

The landlord is ORDERED to attend the property during the times when the alleged odour is reported to the landlord. The landlord is ORDERED to have the plumbing system professionally inspected to ensure the rental unit is not being contaminated with

sewer, sewer gases, mould or other toxins. The landlord must obtain a report from the plumber and provide it to the tenant no later than November 30, 2008.

The filing fees are awarded to the tenant.

October 21, 2008

Date of Decision