



# Dispute Resolution Services

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

## Decision

### Dispute Codes:

CNC

MNDC

OLC

RPOPT

AAT

RR

FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause dated September 22, 2008 and effective October 31, 2008. The tenant's application also requested a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order compelling the landlord to comply with the Act, Regulation or tenancy agreement; an Order compelling the landlord to make repairs to the unit, site, property; an Order of Possession for the rental unit or site; an Order to allow access to or from the unit or site for the tenant or the tenant's guests; an Order allowing a tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and reimbursement by the landlord for the cost of the filing

Both the landlord and the tenant appeared and each gave affirmed testimony in turn.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord's issuance of the One-Month Notice to End Tenancy for Cause was warranted or whether it should be cancelled. This requires a determination of whether the tenant or persons permitted on the property by the tenant:
  - significantly interfered with and or unreasonably disturbed other occupants or the landlord or;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - put the landlord's property at significant risk;
- Whether the tenant is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
  - Has the tenant offered proof that the specific amount being claimed is validly owed by the tenant to this landlord?
  - Has the tenant submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?
- Whether or not there is proof that the landlord is violating one or more provisions of the Act and should be ordered to comply with the Act
- Whether or not repairs to the unit are warranted under the Act, in which case an order against the landlord should be issued

- Whether or not an Order of Possession should be issued to the tenant
- Whether or not the landlord is denying access to the unit in regards to the tenant or the tenant's guests
- Whether or not the tenant should be entitled to reduce the rent to compensate for repairs, services or facilities agreed upon but not provided.

The burden of proof is on the landlord/respondent to justify the reason for the Notice to end Tenancy under the Act.

However, in regards to the remainder of the issues contained in this application including: proof that the tenant is owed compensation for damage or loss; that an order to compel the landlord to comply with the Act is warranted; that an order against the landlord to complete repairs to the property is justified; that the landlord is wrongfully denying access to the tenant or the tenant's guests contrary to the Act; and that the tenant's rent should be reduced to compensate for repairs, service or facilities agreed upon but not provided, the onus falls on the tenant/applicant to prove the case.

#### **ISSUE: Notice to End Tenancy Background and Evidence**

Submitted into evidence by the applicant/tenant in support the application were some photographs, a document titled "The Timeline of Events" and a letter from the landlord dated September 16, 2008 purporting to be a notice to end the tenancy.

Submitted into evidence by the landlord was a copy of "Notes Related to Tenants" chronicling the landlord's complaints about the activities of the tenants, a copy of the One-Month Notice to End Tenancy for Cause dated September 22, 2008, and correspondence dated September 23, 2008 relating to a legal action being initiated by the tenant against the landlord for injuries incurred due to a fall

The landlord testified that the One-Month Notice to End Tenancy was issued because an associate of the tenant had made threatening comments which prompted the landlord to lodge a complaint with the police. The landlord also testified that the tenant had claimed an injury due to an alleged fall on the premises that the landlord suspects was not true. The landlord testified that the tenant had also issued a threat when the landlord attempted to discuss ending the tenancy. Other complaints by the landlord included an allegation that the tenant was placing the landlord in danger by having street people staying in the suite, bringing in a bedbug infestation, adding an additional occupant without the landlord's permission, plotting to defraud the landlord through a contrived lawsuit and other offensive conduct by the tenants.

The tenant testified that the One Month Notice to End Tenancy was issued as a reprisal for the tenant being injured in a fall on the property and that there was no merit to the landlord's allegations contained in the Notice. The tenant testified that at no time did the tenant witness any threatening comments made by the tenant's associate.

### **Analysis of Issue - Notice to End Tenancy**

I find that the events as described by the landlord, if true, would meet the criteria under section 47(1) (d)(i) and 47(1)(d)(ii) which provide that a tenancy can be ended for cause if the tenant or a person permitted on the residential property by the tenant has either significantly interfered with, or unreasonably disturbed another occupant or the landlord or has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

I note that the tenant did not witness the conversation during which threats were allegedly made by the third party to the landlord and therefore could not refute what was claimed to have been said. I also note that the written police report confirmed that the tenant had admitted to threatening the landlord in response to the landlord attempting to enter the unit. I find that, regardless of the extent of the provocation inflicted on the applicant/tenant, there is no valid justification that would nullify the gravity of threats of

violence. Accordingly, I find as a fact that the verified conduct of the tenant would meet the threshold of significantly interfering with and unreasonably disturbing the landlord.

Based on the testimony and evidence presented, I find that the One-Month Notice issued by the landlord dated August 22, 2008 is justified under the Act. Accordingly I find that it should not be cancelled and should remain in force.

### **Other issues in the Tenant's Application**

#### **Claim for Damages**

The tenant has made a monetary claim for compensation under section 67 of the *Act* for damages or loss in the amount of \$109.56.

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the Applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the tenant, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenant has not presented sufficient proof to support the tenant's claim of damages against the landlord.

#### Order Landlord to Comply with Act

The tenant's application also requested an order to compel the landlord to comply with the Act. The tenant testified that the landlord has engaged in harassing conduct that interfered with the tenant's right to quiet enjoyment of the suite. The tenant testified that the landlord banged on the tenant's door at a late hour and subjected the tenant and the tenant's guests to verbal abuse. The tenant also alleged that an emergency exit was being blocked by a piece of furniture owned by the landlord.

The landlord disputed the claim that the landlord had harassed the tenant and stated that contacting the tenant for the purpose of discussing the end of tenancy or to inspect the unit would not be considered harassment. The landlord acknowledged that the hour was late, but was aware that the tenant was active at that time. In regards to the furniture blocking the exit, the landlord pointed out that the item was being used by the tenant.

It is important to note that the two parties and the testimony each puts forth, do not stand on equal grounds. The reason that this is true is because one party must carry the burden of proof. In other words, the applicant, in this case the tenant, has the onus of proving, during these proceedings, that the purported incidents occurred as stated. In situations, such as this, where the evidence consists only of contradictory verbal testimony then the party who bears the burden of proof will not succeed.

In any case, as the tenancy is coming to an end, I find that this matter has become moot. I therefore find that this portion of the application must be dismissed.

#### Order for Repairs

The tenant testified that the landlord had failed to complete repairs to the unit but did not produce adequate supporting evidence, such as letters to the landlord or reports from trades professionals.

The landlord denied that any needed repairs were neglected.

The burden of proof is on the tenant and I find that it has not been met. In addition, I find that, given that the Notice to End Tenancy has been upheld, the matter of repairs is no longer a material consideration. I find that this portion of the tenant's application should be dismissed.

#### Order of Possession for Tenant

Being that I have upheld the Notice to End tenancy, the tenant's request for an Order of Possession can not be contemplated and I find that this portion of the tenant's application must be dismissed.

#### Order to Allow Access

The tenant testified that the landlord has attempted to restrict one of the occupants of the suite as well as some of the tenant's guests.

The landlord denied imposing unwarranted restrictions on access for the occupants or guests, but admitted to instructing the tenant that the individual who had made verbal threats against the landlord was not permitted on the property.

Although a tenant's right to access is protected by section 30(1) of the Act, which states that a landlord must not unreasonably restrict access to residential property, I find that the landlord's decision not to permit the person against whom a police complaint was made to come onto the property was not an unreasonable restriction pursuant to the Act. Accordingly, I find that this portion of the application must be dismissed.

#### Rent Reduction as Compensation

The tenant testified that the rent should be reduced to compensate for repairs, services or facilities agreed upon but not provided. However, I find that the tenant did not present sufficient evidence to meet the tenant's onus in proving that a tangible loss of the value of the tenancy had occurred due to the absence of repairs, services or facilities that were purportedly included in the tenancy agreement but allegedly not provided by the landlord. Therefore I find that this portion of the tenant's application must be dismissed.

#### Conclusion

Based on the evidence and the testimony discussed above, I find that none of the elements nor claims contained in this application can be supported under the Act. Accordingly, I hereby dismiss the tenant's application in its entirety.

October 16, 2008

Date of Decision