



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Decision

### Dispute Codes:

OPC, CNC, and FF

### Introduction

This hearing dealt with cross applications between the parties.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Cause and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for set aside a Notice to End Tenancy for Cause and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

The issues to be decided are whether there are grounds to end this tenancy for cause and whether either party is entitled to recover the fee for filing the Application for Dispute Resolution, pursuant to sections 55, 47, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The Managing Broker and the Tenant agreed that this tenancy began on January 14, 1994.

The Property Manager stated that she posted a One Month Notice to End Tenancy for Cause on the front door of the rental unit on January 30, 2009 and placed a second copy under the door on that same date. The Notice informed the Tenant that if he did not file an Application for Dispute Resolution to dispute the Notice within ten days of receiving it, he is presumed to have accepted the Notice and must vacate the rental unit

by February 28, 2009. The Tenant stated that he located the One Month Notice to End Tenancy inside his rental unit on January 31, 2009.

The One Month Notice to End Tenancy for Cause indicated that the Landlord was ending the tenancy because the tenant or a person permitted on the property has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant or a person permitted on the property has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; the tenant or a person permitted on the property has put the landlord's property at significant risk; and the Tenant has caused extraordinary damage to the rental unit. The Landlord only needs to establish that one of these grounds exist in order to end this tenancy.

The Managing Broker stated that the Landlord wished to end this tenancy, in part, because the Tenant repeatedly flooded his bathroom, causing water to leak into rental unit below on several occasions.

The Landlord submitted an email, dated January 27, 2009, which was received from the occupant living below the Tenant. In that email the occupant stated that the Tenant's bathtub overflowed sometime in November of 2008, which caused water to leak into her bathroom and hallway. She further stated that water leaked into her bathroom again on December 18, 2008, which the Tenant told her was because the overflow on the bathtub was not working properly.

The Tenant acknowledged that his bathtub overflowed in November of 2008, when he left the bathtub unattended, with the water running, for a period of time. He acknowledged that water leaked from his rental unit into the rental unit below on December 18, 2008. On that occasion he stated he was having a bath, that the bathtub was very full, and that the overflow drain was not working properly, which must have caused the leak. He stated that he came to the conclusion that the overflow drain was malfunctioning, as the water stopped leaking once the water level dropped below the level of the overflow drain.

The Managing Broker stated that the overflow drain on the Tenant's bathtub was functioning properly. He argued that the only reason the water leaked was because the Tenant allowed the water level to rise above the overflow drain, which is not designed to be submerged, as they do not have the capacity to drain that volume of water.

The Landlord submitted an email, dated January 28, 2009, which was received from the former occupant living below the Tenant. In that email the former occupant stated that the Tenant's bathtub had overflowed on several occasions while he was living in the rental unit. He stated that he advised the previous building manager of the incidents but he never received a response from the manager.

The Tenant stated that he was never advised of problems with water leaking prior to the incident in November, and he is not aware that he caused any other problems.

The Managing Broker stated that the Landlord wished to end this tenancy, in part, because the Tenant had drained water from his radiator, which caused the heating system in the residential complex to malfunction. He stated that they have been periodically experiencing problems with the heating system in the residential complex.

The Landlord submitted a fax from Service Plus, dated November 24, 2008, which indicated that they checked the boiler system in the residential complex the previous week. The fax indicated that the company recommend that a new boiler feed be installed. The Managing Broker stated that the company believed a new boiler feed was necessary because there was an unexplained absence of hot water/pressure in the heating system. He stated that the repairs are not being conducted, as they believe they have now located the source of the malfunction.

The Landlord submitted an invoice from Service Plus, dated February 11, 2009, in which the technician noted that there was no hot water or heat in the residential complex. The technician noted that the boiler pressure was down and that he refilled the system.

The Managing Broker stated that the Tenant's rental unit was inspected on January 30, 2009, at which time they found a garden hose attached to the radiator. He speculates that the Tenant was draining water from the radiator, which was causing the problems with the heat in the complex.

The Landlord submitted a letter from Service Plus, dated March 03, 2009, which indicates that there is a hose bib on the radiator in the rental unit. The author of the letter speculated that the Tenant was drawing water from the system, which was causing the pressure to drop in the system.

The Tenant stated that the hose was installed by a heating contractor sometime during the mid-nineties. He stated that the contractor advised him to use the hose to bleed the system anytime he found that the radiator was not working properly. He stated that he did bleed the system by draining water into the kitchen sink on several occasions, although he contends that he has not drained the radiator this year.

The Managing Broker argued that hose bib is used to drain water from the system, not to bleed air from the system. He contends that there is a valve on top of the radiator that is designed for bleeding the system. He further stated that all of the rental units have been inspected and there is no evidence that any of the other occupants have been draining water from the system.

The Managing Broker stated that the Landlord wished to end this tenancy, in part, because of the general condition of the rental unit. The Managing Broker stated when the rental unit was inspected on January 30, 2009, it was extremely dirty and there were signs of mould. He contends that the cleanliness of the rental unit is attracting mice and causing mould to grow.

The Landlord submitted photographs of the rental unit that show the rental unit is extremely dirty and that there is mould in the rental unit.

The Tenant submitted acknowledged that his rental unit was dirty and mouldy when the Landlord inspected on January 30, 2009. He stated that he has cleaned the rental unit, repaired the damage caused to the walls by the mould, and painted the walls. He submitted photographs of the rental unit to show that the unit is clean, the walls appear to be in good repair, and the walls have been painted.

The Managing Broker contends that the repairs to the wall are inadequate and that the mould will continue to grow. He also argued that the Tenant did not submit any photographs of the living room, so he cannot be sure that the living room has been properly cleaned. He acknowledged that the rental unit has not been inspected since January 30, 2009, so he has no direct knowledge of the quality of the repairs or the cleanliness of the rental unit. He further acknowledged that the Tenant has received no previous warnings regarding the cleanliness or the general condition of his rental unit.

The Property Manager stated that there have been reports of mice in two other rental units, which the Landlord speculates are originating from the Tenant's rental unit. The Landlord submitted no evidence to support this speculation. The Managing Broker argued that it is commonly understood that mice thrive in unclean conditions, such as the Tenant's rental unit.

The Landlord submitted an email from the occupant living below the Tenant, who stated that she was moving because she fears that the Tenant will retaliate against her and because she believes that the mice she found in her rental unit originated from the Tenant's rental unit. She submitted no evidence to support her fear that the Tenant would retaliate or that the mice were originating from the Tenant's rental unit.

The Tenant stated that he has not experienced a problem with mice in his rental unit.

The Managing Broker stated that the Landlord wished to end this tenancy, in part, because the Landlord suspects that the Tenant is using the rental unit as a storage area, rather than a place of residence. The Tenant stated that this rental unit is his only residence.

## Analysis

I find that the Tenant received a One Month Notice to End Tenancy for Cause, which has an effective date of February 28, 2009. As the Tenant acknowledged that he received the Notice on January 31, 2009, I find that he was served with Notice on that date, pursuant to section 71(2) of the Act.

I find that the Tenant caused a flood in the rental unit below him on November of 2008, when he forgot that he was overfilling his tub. The Landlord submitted no evidence to establish the extent of the damages caused by the flood and I therefore cannot conclude that this incident caused extraordinary damage to the rental unit. I also have no evidence to show that the Landlord directed the Tenant to repair the damage that he caused.

I find that the Tenant caused a flood in the rental unit below on December 18, 2008 when he overfilled his bathtub. Although the Tenant argued that the overflow drain did not adequately drain the water once it became submerged, I find that it is commonly understood that bathtubs should not be filled above the level of the overflow drain, and I find that he was directly responsible for the flood. The Landlord submitted no evidence to establish the extent of the damages caused by the flood and I therefore cannot conclude that this incident caused extraordinary damage to the rental unit. I also have no evidence to show that the Landlord directed the Tenant to repair the damage that he caused.

Although I accept that the two floods caused an inconvenience to the occupant living below the Tenant, I do not find that the inconvenience was so significant that it warrants an end to the tenancy.

I find that the Landlord submitted insufficient evidence to establish that the Tenant flooded his bathroom prior to November of 2008. In reaching this conclusion, I considered the following:

- The Tenant denied flooding his bathroom prior to November of 2008, although he readily admitted the two recent floods
- The former occupant who sent the email stating that the Tenant had allowed his tub to overflow several times during this occupant's tenancy does not explain how he reached that conclusion when he stated, in the same email, that he has never been in the Tenant's rental unit
- The Landlord submitted no records to show that the Tenant had allowed his bathtub to overflow or that the Tenant was advised that he was causing water damage

I find that the Tenant did cause the heating system to malfunction when he drained water from the radiator. Although the Tenant contends that he has not drained water

from the radiator this winter I find, on the balance of probabilities, that he did recently drain water from the system. I base this conclusion on the presence of the garden hose in his living room and the opinion of the technician who speculated that the Tenant draining the caused a loss of heat in the building recently.

I find that the Tenant interfered with the other occupants of the rental unit when he contributed to the failure of the heating system, as they would have experienced a loss of heat in their rental unit. I am unable to determine the extent of the impact this had on other occupants, as the Landlord did not submit any evidence to establish how cold the residential complex became. Therefore I cannot conclude that the Tenant significantly interfered with or unreasonably disturbed the landlord or other occupants.

Although the heating technician expressed his opinion that the boiler would be damaged if it was permitted to run dry, I have no evidence that such damage occurred, or was at risk of occurring, in these circumstances, therefore I cannot conclude that the Tenant caused significant damage to the rental unit when he tampered with the heating system.

I find that there has been no evidence submitted to establish that the Tenant was acting maliciously when he drained water from his radiator. Rather, I find that the Tenant actually believed that he was correcting a perceived problem with the heating system and that he is now aware that he should not be draining water from his radiator.

I find that the Tenant has cleaned his rental unit and repaired the mould in the rental unit. As the Landlord has not inspected the rental unit since the unit was cleaned and repaired, I cannot conclude that the repairs or the cleaning has been inadequate.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant is responsible for the infestation of mice in the residential complex. In reaching this conclusion I was strongly influenced by the absence of evidence that shows there have been mice in the Tenant's rental unit. I also reject the Landlord's speculation that the messy conditions in the Tenant's rental unit are responsible for the mice in the rental unit, as it is my experience that mice are also attracted to clean places that are warm and dry.

I find that the Landlord has failed to establish that the rental unit is not being used for residential purposes.

After considering all of the evidence presented, I find that the Landlord has submitted insufficient evidence to show that Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant or a person permitted on the property has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; that the tenant or a person permitted on the property has put the landlord's property at significant risk; and that the Tenant has caused extraordinary damage to the rental unit.

In reaching this conclusion I was influenced, in part, by the fact that this is a long term tenancy and that there has been no evidence that the Landlord has previously expressed concerns about the Tenant's actions. I find that the Tenant took appropriate action to repair the damage to his rental unit and to clean his rental unit within a reasonable period after he was notified that there was a problem. I am also influenced by the fact that the Tenant stated that he would maintain the cleanliness of the rental unit, that he would not drain water from his radiator, and that he would not overfill his bathtub.

As the Landlord's Application for Dispute Resolution has been dismissed, I dismiss the Landlord's application for compensation for the filing fee paid for this Application.

As the Tenant's behaviour significantly contributed to the issues in dispute at this hearing, I find he is responsible for paying the costs he incurred when filing the Application for Dispute Resolution. On this basis, I dismiss his application for compensation for the filing fee paid for this Application.

### Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that the Landlord has grounds to end this tenancy pursuant to section 47 of the *Act*, I hereby set aside the One Month Notice to End Tenancy, dated January 30, 2009, and I order that this tenancy continue until it is ended in accordance with the *Act*.

The Tenant should be aware that further tampering with his radiator or any further attempts to repair the heating system in the residential complex could be grounds to end this tenancy.

The Tenant should also be aware that if he allows his bathtub to overflow again, or if he fills it higher than the overflow drain and subsequently causes a flood, the Landlord may have grounds to end this tenancy.

Finally, the Tenant should be aware that if he allows the cleanliness or the general condition of his rental unit to significantly deteriorate, the Landlord may have grounds to end this tenancy.

The Landlord and the Tenant are both reminded that the Landlord has the right to inspect a rental unit on a monthly basis, in accordance with section 29 of the *Act*.

Date of Decision: March 25, 2009

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