# Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

## Decision

**Dispute Codes**:

CNC, MNDC, LAT, RR, OPC

**Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One-Month Notice to End Tenancy for Cause dated April 21, 2009, purporting to be effective May 31, 2009. 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 to authorize the tenant to change the locks on the rental unit;
- an Order allowing a tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
- The tenant is requesting a monetary order in the amount of $4,000.00

This hearing also dealt with a cross application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated April 21, 2009, and effective May 31, 2009. The landlord was requesting reimbursement for the $50.00 cost of filing the application.

**Issue(s) to be Decided**

The issues to be determined on the tenant's application 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 the notice should be cancelled as requested by the Tenant.
- Whether the tenant is entitled a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement for loss of use of facilities and loss of quiet enjoyment due to devaluing of the tenancy;
- Whether an Order to authorize the tenant to change the locks on the rental unit is warranted;
- Whether the tenant is entitled to receive an Order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided;

The issues to be determined on the landlord’s application, based on the testimony and the evidence are:

- Whether the landlord Is entitled to an Order of Possession based on the One-Month Notice to End Tenancy for Cause This requires a determination of whether the landlord succeeds in proving that:
    - the tenant was repeatedly late paying rent
    - the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
    - the tenant has put the landlord's property at significant risk; or
    - the security deposit was not paid within the 30 days as required by the tenancy agreement

The burden of proof is on the landlord to justify that the reason for the Notice to End Tenancy meets the criteria specified under section 47 of the Act. The burden of proof is on the tenant to prove the tenant's claims under the Act.

**Preliminary Matter**

The tenant advised that she did not receive the landlord's Notice of Hearing or the evidence until the day before the hearing. The tenant testified that the landlord had interfered with her receipt of mail and held back the registered mail notification card until the final notice was delivered. The landlord denied this allegation. The landlord provided proof that the Notice of Hearing was sent by registered mail on May 11, 2009. The tenant stated that because of the delay in receiving the landlord's application, she was late in submitting a substantial amount of evidence to the Tenancy Branch which was not in the file. The tenant testified that this evidence had not been served on the respondent landlord as the tenant did not realize that this was required. The tenant requested an adjournment.

I note that the *Landlord and Tenant Fact Sheet* contained in the hearing package makes it clear that "*copies of all evidence from both the applicant and the respondent and/or written notice of evidence* ***must be served on each other*** *and received by RTB as soon as possible*.." (my emphasis)

I find that the tenant failed to properly serve the evidence in question on the other party in accordance with the Act and Rule 3.1 of the Residential Tenancy Rules of Procedure.

If copies of the applicant's evidence are not received by the Residential Tenancy Branch or served on the respondent as required, the Dispute Resolution Officer must apply Rule 11.6 which deals with the consideration of evidence not provided to the other party or the Residential Tenancy Branch in advance. This rule permits the Dispute Resolution Officer to adjourn a dispute resolution proceeding to receive evidence that a party states was submitted to the Residential Tenancy Branch but was not received by the Dispute Resolution Officer before the dispute resolution proceeding.

However, in this instance the evidence in question was missing from the file but it was also confirmed that the evidence was never served on the respondent landlord. Moreover, the tenant had made her own application on May 4, 2009 and had more than a month to submit evidence. Therefore, the tenant's request to adjourn was denied as it would delay proceedings and would be unfairly prejudicial to the other party.

I find that on May 4, 2009, the tenant had made her own application to refute the landlord's One-Month Notice and was therefore already abundantly aware of the hearing date. I find that, regardless of the fact that the tenant may have had less time to review the landlord's material, the landlord's evidence primarily consisted of documents of which the tenant would have previously seen, such as a copy of the Notice to End Tenancy, copies of rent receipts and a copy of the tenancy agreement.

In regards to the tenant's claim that the landlord was withholding the tenant's mail, I find that the burden of proof is on the tenant to substantiate the allegation, which was being denied by the landlord.

**Background and Evidence Notice to End Tenancy**

The first issue to be dealt with is whether or not the One-Month Notice to End Tenancy for Cause supported and should be enforced with an Order of Possession, as requested by the landlord or whether the Notice must be cancelled as requested by the tenant.

The landlord testified that the tenancy had originally started on October 15, 2008 with rent set at $700.00 and that the tenant paid $350.00 deposit. The landlord testified that in February 2009, the tenant signed a second tenancy agreement that included another occupant with rent set at $800.00. The landlord testified that the tenant was then required to top up the existing security deposit being held to $400.00. The tenancy agreement in evidence confirms that the required deposit was $400.00. However, according to the landlord, the tenant did not pay the remaining $50.00 owed on the deposit. The landlord testified that the tenant did not pay the security deposit in full within 30 days as required under the Act and agreement and was seeking an end to the tenancy on this basis as well as other causes outlined below.

The landlord testified that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord by intentionally bringing a cat into the unit in violation of the tenancy agreement. The landlord testified that members of the landlord's family have severe allergies to cats. The landlord also took issue with the manner in which the tenant failed to maintain the unit in a reasonably clean state and testified that the unit was unkempt and unhygienic. In addition, according to the landlord, the tenant had left stored items and unsightly refuse stacked around the property. The landlord had submitted some photos into evidence showing the exterior of the premises with boxes and other items.

The landlord testified that the tenant put the landlord's property at significant risk as the tenant made it a practice of leaving the stove on unattended with the oven door ajar.

The landlord testified that the tenant was persistently late in paying rent and referenced receipts submitted into evidence that showed late payments made in February, March and April 2009. The landlord testified that the tenant's most recent rent cheque had been returned NSF. This was confirmed by the landlord's agent.

The landlord stated that it was his practice to come to the suite whenever the tenant called to inform him that she had the monthly rent available, at which time the landlord would also do a monthly inspection of the suite. The landlord testified that this monthly inspection process was a term in the tenancy agreement that was signed and agreed to by the tenant. However, according to the landlord, the tenant frequently failed to call him and sometimes refused to answer the door when the landlord tried to collect the rent and inspect the suite. The landlord testified that the tenant had occasionally become rude and belligerent.

The tenant's position was that the One-Month Notice to End Tenancy for Cause should be cancelled. The tenant disputed much of the landlord's evidence and testimony.

In regards to the security deposit, the tenant acknowledged that, under the new tenancy agreement with rent set at $800.00, the tenant was fully aware that the new contract contained a requirement for a security deposit of $400.00. The tenant testified that although the balance of her existing deposit from the previous agreement was only

$350.00 she did not believe that the extra $50.00 would be required. The tenant testified that she did make a partial payment towards the deposit in the amount of $25.00. This claim was disputed by the landlord. However, the tenant did concede that she had neglected to pay the security deposit in full within 30 days due to financial hardship.

The tenant challenged the landlord's claim that she had seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The tenant admitted to bringing a cat into the unit, but stated that the cat was just visiting and was brought in for rodent control. The tenant confirmed that she had not contacted her landlord regarding any mice or rat infestations. The tenant denied that her housekeeping was deficient or that any health issues were created by the tenant.

The tenant testified that she did leave the oven door open, but stated that this was due to cooking Easter dinner and did not pose any risk to the building or occupants. The tenant made an allegation that the landlord used the stove issue as an excuse to intrude on the tenant's privacy.

In regards to the allegation that the tenant was persistently late in paying rent, the tenant placed the blame for this on the landlord. The tenant testified that the landlord failed to come to collect rent on the first day of the month and that, on one occasion when she attempted to pay the landlord's wife, the funds were refused. The tenant stated that the landlord's insistence on inspecting the unit as a condition of collecting the rent, caused delays as the tenant was not always prepared to let the landlord enter at will. The tenant stated that she had no knowledge of the NSF cheque for May and pointed out that she has not received her bank statement as of yet. The tenant stated that there was no basis for the tenancy to be ended for cause and felt that the Notice should be cancelled.

**Analysis – Notice to End Tenancy for Cause**

I find that the tenant did commit a violation of the tenancy agreement by knowingly bringing a cat into the unit despite the term in the tenancy agreement forbidding this, which the landlord evidently considered to be a breach of a material term. I find also

find that there is convincing evidence that the tenant improperly stored possessions on the premises in an unsanitary manner. However, it can not automatically be presumed that these acts *seriously* jeopardized the health, safety or lawful right of the landlord in the absence of conclusive proof. I also find that there were no letters of warning from the landlord to the tenant regarding these matters. I find that the evidence to support the allegation that the tenant left the oven door ajar, thereby putting the landlord's property at risk, only consisted of disputed verbal testimony from the landlord which is not sufficient to meet burden of proof bourn by the landlord. In regards to the late payment of rent, I find that the landlord's practice of collecting rent in conjunction with monthly inspections may have interfered with the timing for collecting rent.

Section 29 of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

> (a) the tenant gives permission **at the time of the** entry or not more than 30 days before the entry;
>
> (b) **at least 24 hours and not more than 30 days before the entry**, the landlord gives the tenant written notice that includes the following information:
>
> > (i) the purpose for entering, which must be reasonable;
> >
> > (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (f) an emergency exists and the entry is necessary to protect life or property.

(my emphasis)

The tenant was within her right to refuse access under the Act. This should not have impacted the tenant's obligation to pay rent on time had the two events not been done in conjunction with one another. Inspections without written notice can occur merely on agreement between parties, and often do. But if the tenant chooses not to grant access, then the 24-hours written notice providing all of the details is mandatory. A

blanket agreement that encompasses the entire tenancy, even if contained in the tenancy agreement, would not be enforceable under the Act.

I find that the testimony and evidence of both parties confirmed that the tenant failed to pay the security deposit within 30 days as required under the Act. Therefore, notwithstanding the fact that some of the causes listed by the landlord may or may not support ending the tenancy, I find that the matter of the tenant's failure to pay the security deposit in full within 30 days is sufficient to support and validate the landlord's One-Month Notice to End Tenancy for Cause.

I find that the landlord is entitled to an Order of Possession based on the Notice.

**Tenant's Application Background and Evidence**

The tenant is claiming a past and future rent abatement for the loss of facilities in that the landlord had promised to remove a pool table to give the tenant more room, but failed to do so. The tenant feels that the presence of the table has devalued her tenancy and the tenant believes that this warrants compensation. The tenant is also claiming that the peaceful enjoyment of her tenancy was interfered with by the landlord's persistent intrusions, including an allegation that the landlord entered the tenant's suite when she was not at home and that the landlord had pushed his way in. The tenant is claiming $4,000.00 in compensation for the above concerns. The tenant was also seeking an order that she be permitted to change the locks.

The landlord disputed the tenant's allegations. The landlord testified that the tenancy agreement signed by the tenant specifically states that the pool table would not be moved. While the landlord conceded that he did inspect the unit and did attempt to do so on a monthly basis without serving 24 hours written notice, he mistakenly believed that his actions were in compliance with the Act because of the inspection clause in the tenancy agreement. The landlord stated that he was not intrusive in any way and that the only time the tenant's unit was entered without her prior knowledge was because of a perceived emergency.

**Tenant's Application – Analysis**

The portion of the tenant's application dealing with the request to cancel the One Month Notice to End Tenancy has already been discussed above and it was determined that the tenancy will end, based on the One-Month Notice for Cause.

I find that the tenant's claim for compensation regarding the pool table, is not supported by the evidence. I find that the fact that the table had not been removed would not be considered as a restriction of facilities otherwise included in the tenant's rent, because the tenancy agreement contains a specific provision stating that the pool table will remain. Therefore I find that this portion of the tenant's application must be dismissed.

In regards to the tenant's claim that the landlord interfered with her quiet enjoyment, I find that the landlord did commit a mild breach of the Act by attempting to inspect without 24-hours written notice. However, while this may have been disturbing, I don't find that it significantly impacted the value of the tenancy. It was evident that when the tenant did not feel like permitting the landlord to inspect, she was completely at liberty to postpone the monthly inspection and, according to her testimony, did so on more than one occasion. In any case, the landlord could have legitimately imposed an inspection on a monthly basis with adequate written notice. I find that the tenant did not offer any evidentiary proof that the landlord was routinely entering the unit without her knowledge or permission.

I find as a fact that each of these parties had contravened the Act or the agreement in some respect and each felt that the other was guilty of unreasonably interfering with their peaceful enjoyment. However, I find that both the landlord and the tenant must share in the deteriorated stated of the tenancy relationship. In any case, I find that the interference from the landlord was not significant enough for the tenant to be entitled to a retroactive rent abatement for loss of value to the tenancy. Therefore, the portion of the tenant's application requesting monetary compensation is dismissed.

I find that, as the tenancy is ending, it is not necessary to make a determination in regards to the tenant's request to change the locks or to order that the landlord comply

with the Act. The portion of the tenant's application relating to these matters is dismissed.

**Conclusion**

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective Tuesday June 30, 2009. The order must be served on the tenant 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 for the $50.00 cost of filing this application. I order that this amount may be retained from the tenant's security deposit.

The tenant's application is dismissed in its entirety without leave to reapply.

June 2009 _____

Date of Decision

Dispute Resolution Officer