

## **DECISION**

Dispute Codes      CNC, MNR, ERP, RP FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for Cause, to obtain a Monetary Order for cost of emergency repairs, Order the Landlord to make emergency repairs for health and safety reasons, make repairs to the rental unit, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was in accordance with section 89 of the *Act*, served personally to the Landlord at their place of business by the Tenant on July 20, 2009. The Landlord confirmed receipt of the hearing documents.

The Landlord, Tenant and Seven (7) Witnesses for the Landlord appeared, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Tenant entitled to Orders under sections 47, 32, 67 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The month to month tenancy began on November 1, 2006 with the monthly rent payable on the first of each month in the amount of \$842.40. The Tenant paid a security deposit of \$405.00 on October 26, 2006.

Witness # 1 testified that a 1 Month Notice to End Tenancy was served to the Tenant by posting it on the Tenant's door on July 17, 2009. The Tenant confirmed receipt of the 1 Month Notice to End Tenancy for Cause.

The Landlord testified that the Tenant has paid August rent since being issued the 1 Month Notice to End Tenancy and that the Tenant was issued a receipt for "use and occupancy only" on August 5, 2009, the date the August rent was paid.

Testimony was heard as to the four reasons why the 1 Month Notice to End Tenancy was issued as follows:

Tenant is Repeatedly Late Paying Rent – The Landlord referred to her evidence of the Tenant's payment ledger which proves that the Tenant paid several months rent late and most recently the late payments were received on July 3, 2009, June 12, 2009, May 14, 2009, and April 8, 2009. The Landlord advised that the Tenant has been issued several notices for late payment of rent and most recently was issued a 10 Day Notice to End Tenancy on June 10, 2009.

The Tenant argued that he has bounced between receiving Employment Insurance, working casual jobs, and going to school fulltime and admitted that he has been late paying his rent on several occasions as a result.

Significantly interfered with or disturbed another occupant – The Landlord provided documentary evidence from other Tenant's which support their claim that the Tenant has interfered with or disturbed other occupants by playing loud music, yelling and swearing at neighbours ultimately resulting in calls to the police.

Witness #4 testified how she has had discussions with the Tenant and how he would respond to her in an inappropriate fashion.

The Tenant argued that he feels that Witness #4 has tried to poison his dog and that he did speak to the neighbour telling her that his dog doesn't bark for no reason at all.

Seriously jeopardized the health or safety of another occupant – Witness # 2 testified to an incident where he was riding his bike in the common area and the Tenant's dog chased after him and bit his leg damaging the Witness' pants.

The Tenant argued that the Witness came around a corner too fast and spooked his dog and that is why his dog chased after the witness and bit him. The Tenant confirmed that he agreed to pay for the damage caused to the witness' pants.

Witness #3 testified that he was in his driveway pruning his hedges and that when the Tenant and his dog walked by they stopped and when the Witness bent down to pet the dog the dog bit the Witness' hand.

The Tenant testified that it was his friend walking the dog that day and that the dog bit the Witness because he had a hedge trimming saw in his hands and had a leather glove on causing the dog to feel threatened by the witness.

Witness # 4 testified that the approximately one week ago she was on her deck and the Tenant's dog began to bark at her and the Tenant began yelling at her and then the Tenant threatened the Witness by saying "every time that bitch sticks her head around the deck divider the dog barks." The Witness stated that the Tenant also told her that "he could and would sick his dog on me." The Witness advised that she called the police in response to the threat and filed a complaint against the Tenant.

The Tenant argued that he feels this Witness has attempted to poison his dog and the Tenant testified "yes I did tell her (the Witness) that I would let my dog bite her".

Breach of a Material Term of the Tenancy – The Landlord pointed to the Tenant's tenancy agreement section (J)(i) which stipulates that the Tenant shall not permit a dog

or other animal or pet of any kind to be kept or allowed on, in, or about the premises, unless approved in writing by the Landlord. The Landlord advised that the Tenant had been issued written notice that the dog needed to be removed from his premises or the Tenant will be issued an eviction notice.

The Tenant confirmed receiving the written notice to have the dog removed, that he still has the dog in the rental unit, that the dog is a large breed, crossed between a bull mastiff and lab, and that a property manager and maintenance person attended his rental unit a few weeks ago to see if the dog was still residing in the rental unit. The Tenant argued that he tried to introduce the property manager and maintenance person to his dog but that the property manager ran away as she is terrified of dogs.

The Tenant confirmed that he did not receive written permission to house a dog at his rental unit but argued that when he rescued the dog he called his Landlord to request permission to keep the dog but that his telephone calls were never returned.

The Landlord has requested an Order of Possession for as soon as possible.

The Tenant has claimed \$ 2,500.00 for the cost of emergency repairs required to be done to the railing on his deck and his kitchen and bathroom taps. The Tenant confirmed that he has not had the work completed and used a ball park figure as to the worth of the repairs.

The Tenant stated that he has provided the Landlord with numerous requests to have his taps repaired and his carpet stretched however the Landlord has failed to complete any of the work he has requested.

The Landlord argued that they have been repairing deficiencies at the rental unit and pointed to their documentary evidence from June 22, 2009 whereby the maintenance staff inspected the rental unit, provided the list of items to be repaired and that most of these items have already been fixed.

The Tenant confirmed that some of the repairs have been done already however the main items are still outstanding.

### Analysis

**Order of Possession** - I find that the Tenant has failed to support his request to cancel a Notice to End Tenancy and that based on the testimony and evidence before me I find that the Tenant is in contravention of Sections 47(b), 47(d)(i), and 47(d)(ii) of the *Act* .

The Landlord has requested an Order of Possession for as soon as possible and I find that the landlord has met the requirements pursuant to Section 55(1)(a) of the *Act*.

**Monetary Claim for Emergency Repairs** - I find that in order to justify payment of damages under sections 67 of the *Act*, the Applicant Tenant 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, in this case the Tenant, bears the burden of proof and the evidence furnished by the Applicant Tenant 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 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

The Tenant submitted a claim for emergency repairs in the amount of \$2,500.00 however the Tenant has not made any repairs. Based on the aforementioned I find that the Tenant has failed to prove the test for damages as listed above and I hereby dismiss the Tenant's claim without leave to reapply.

As the Tenant has not been primarily successful in his application, I hereby dismiss his request to recover the cost of the filing fee from the Landlord, without leave to reapply.

In regards to the Tenant's statement that the 1 Month Notice to End Tenancy was issued in retaliation to his application for dispute resolution, I find that the evidence supports the Landlord's claims that the Tenant was previously notified of his tenancy violations and of the pending issuance of the eviction notice and that the 1 Month Notice to End Tenancy for Cause was issued in compliance with the Act.

### Conclusion

I HEREBY FIND that the Landlord is entitled to an Order of Possession effective **two days after service on the Tenant**. This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY DISMISS the Tenant's application, without leave to reapply.

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: August 31, 2009.

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Dispute Resolution Officer