



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel the One Month Notice to End Tenancy for Cause, for an Order for the landlord to comply with the Act and a Monetary Order to recover the filing fee.

The tenant served the landlord in person on October 03, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Should the notice to end tenancy for cause be cancelled?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to recover the filing fee from the landlord for the cost of the application?

## Background and Evidence

This month to month tenancy started on April 01, 2008. The tenant rents a unit with a separate bathroom for the monthly rent of \$850.00. Rent is due on the 1<sup>st</sup> of each month. The tenant paid a security deposit of \$425.00 on April 01, 2008.

The tenant seeks to cancel the Notice to End Tenancy for Cause as the landlord has not stated any reasons on the notice for the end of the tenancy other than the tenant has left some personal belongings in the way of the fire exit. These items have been removed and the fire exit is clear.

The tenant also seeks an order for the landlord to comply with the Act. She states that at the start of the tenancy they had a verbal agreement that her unit would be self-contained and she would be the only tenant who has access to the interior staircase unless there was an emergency or inclement weather. Her bathroom is not contained within her unit and she has to cross the hall at the top of the staircase to access the bathroom. She did agree that the tenants in the adjoining unit could use the staircase in to move their belongings into their unit. The tenant claims that the old tenants always used the fire escape stairs to access their unit and did not use the internal staircase. The landlord has now rented the adjoining suite to new tenants and told them the internal staircase is a common area and they may use it as such. The tenant claims this has altered the terms of her tenancy agreement with the landlord and infringed on her privacy when she has to access her bathroom.

The landlord testifies that he did not have an agreement with the tenant that she rented a self-contained unit and the stairs and hall were for her sole use. The landlord testifies that the old tenants did tend to use the fire escape stairs but they could have accessed the interior staircase if they wanted to as it is a common area. He claims the tenants unit

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was never rented as a self-contained unit and she knew the hall and stairs were a common area when the tenancy started.

The landlord claims the tenant left some personal items blocking the fire exit route and as such he served her with a One Month Notice to End Tenancy for Cause. The landlord was not aware that he had used an out of date form or had not filled in the correct sections of the form indicating a reason for the tenancy to end. The landlord accepts that the tenant has now moved these items from the fire exit.

## Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the landlord has used an old 2005 form for the Notice to End Tenancy and has not filled in any reasons in the appropriate boxes for the tenancy to end. I also find that the tenant has moved her personal belongings from the fire exit and this no longer presents a problem in this area. Therefore, I find the Notice to End Tenancy for cause is an invalid document and uphold the tenants' application to cancel this notice.

With regards to the tenants claim that the landlord has not complied with the *Act* and has changed a term of the tenancy agreement, In the absence of a written tenancy agreement outlining the tenants use of the rental unit and bathroom I find that the tenant has the burden of proof and must show that an agreement was in place that she had sole use of the hall and staircase leading to her unit and bathroom. This means that if the tenants' evidence is contradicted by the landlord, the tenant will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any corroborating evidence, I find that the tenant has not provided sufficient evidence to show that she had sole use of these areas and had rented a self-contained unit from



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the landlord. Therefore this section of the tenants' application is dismissed without leave to reapply.

## Conclusion

The tenant's application is partial successful. The one Month Notice to End Tenancy for Cause dated September 30, 2009 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her **\$50.00** filing fee for this proceeding and I Order that she deducts this amount from her next rent payment when it is due and payable to the landlord.

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: November 16, 2009.

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Dispute Resolution Officer