



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes CNC, MNDC, OLC, LRE, RR, SS

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause, for a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement, an Order for the landlord to comply with the *Act*, an Order for the landlord to provide services or facilities required by law, to suspend or set conditions on the landlords right to enter the rental unit and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant withdraws her application for a Substitute Service Order.

The tenant served the landlord in person on January 22, 2010 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. The tenant has an advocate to represent her. Neither party called their witness. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issues(s) to be Decided

- Is the tenant entitled to cancel the One Month Notice to End tenancy for Cause?
- Is the tenant entitled to a Monetary Order for money owed or compensation for loss or damage under the *Act*?
- Is the tenant entitled to receive an Order for the landlord to comply with the *Act*?

Residential Tenancy Branch  
Ministry of Housing and Social Development

- Is the tenant entitled to an Order for the landlord to provide services or facilities required by law?
- Is the tenant entitled to an Order to set or suspend condition on the landlords' right to enter the rental unit?
- Is the tenant entitled to reduce her rent for repairs, services or facilities agreed upon but not provided?

## Background and Evidence

This month to month tenancy started on January 12, 2007. The tenant pays a monthly rent of \$450.00 which is due on the first of each month. The tenant paid a security deposit of \$225.00 on January 12, 2007. The landlord purchased the property and became the new landlord on January 13, 2010. Prior to this in November, 2009 the landlord rented the garage and parking space from the previous owner for storage and parking for his RV on the driveway of the property.

The tenant testifies that she rents part of the upper unit which consists of a kitchen, bathroom, bedroom and front room; she has shared use of the laundry facilities in the basement and has use of the yard. She has a separate entrance to her unit from the rest of the house. The tenant testifies that the landlord decided to remove her satellite service and replace it with cable. The tenant did not agree with this. On January 15, 2010 the landlord appeared with the cable contractor and she refused to allow the landlord into her rental unit. However, she states she would have let the contractor in but he left. The tenant also states that the landlord restricted her access to the laundry room in the basement because he moved some of his belongings into the area. The tenant feels the landlord is partially living in the basement and his RV which is parked outside her window. She states that she feels uncomfortable using the facilities due to this. She feels this is an infringement of her right to quiet enjoyment and loss of privacy and states that the driveway is part of her verbal rental agreement with the previous landlord. The tenant seeks \$900.00 in compensation for the loss of her satellite service, loss of quiet enjoyment of her rental unit, and loss of the laundry facilities.

Residential Tenancy Branch  
Ministry of Housing and Social Development

The landlord testifies that when he bought the property he decided to renovate the basement. He moved the laundry room door but posted a notice to inform the tenants this has happening and that their key would still work in this door. The landlord claims he did not impede the tenants' access to the laundry and she has still been using it. He does store some of his belongings there and will shortly be starting renovations on the basement however the tenants will still have use of the facilities there as it will remain a common area. The landlord states that he does not live in the basement.

The landlord testifies that when he bought the property he was not aware that he had to continue to provide the satellite service. He offered the tenant the cable service to replace this which she originally agreed to. The landlord organised the cable to be installed on January 15, 2010 and gave the tenant a 24 hour notice to entry her unit on January 14, 2010. The landlord claims the tenant was sitting outside her unit at the time and she became angry with him. He put the 24 hour notice in her lap which she threw down the stairs. The landlord claims that when he arrived on January 15, 2010 with the cable man the tenant refused the landlord entry to her unit. He agrees that she said the cable man could come in but the cable man refused and left the building. The landlord claims that on January 15, 2010 he served the tenant with another 24 hour notice to enter her unit. The tenant refused entry again and consequently does not have either satellite or cable service as the former owner has removed the satellite box from her unit. The landlord states that he offered the tenant a \$50.00 rent reduction for the loss of the satellite service but she refused to accept this.

The landlord served the tenant with a One Month Notice to End Tenancy for Cause on January 18, 2010 in person. The reasons given on this notice are:

- That the tenant or a person permitted on the property by the tenant has; significantly interfered with or unreasonable disturbed another occupant or the landlord; seriously jeopardized the health, safety or lawful right of the landlord or another occupant; put the landlords property at significant risk.

Residential Tenancy Branch  
Ministry of Housing and Social Development

- The tenant has engaged in an illegal activity that has, or is likely to; adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant or the landlord; jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testifies that he has attempted to make some repairs to the property and the tenants unit but she is uncooperative. An area of floor in her unit is in need of a repair as there is a hole and this could be dangerous. The landlord also claims the tenant restricted his access to her unit so he can replace the outside lights to provide security for the outside of the property. The landlord claims the tenant smokes inside her unit and also smokes pot. He claims the tenant comes in and out of the driveway while driving impaired which is dangerous to his property and other tenants. The landlord claims he has received complaints from other tenants about this tenant smoking in her unit and using the laundry late at night.

The landlord has requested an order of Possession based on the reasons given on the One Month Notice.

The tenant disputes the reasons given on the notice and states the notice was issued so the landlord can assume possession of the unit so it can be rented for more money. The tenant requests the notice is cancelled and requests an order for the landlord to comply with the Act when attempting to gain access to her unit. She seeks an order to set or suspend conditions on the landlords' right to enter her unit. The tenant also requests an Order for the landlord to provide satellite service as previously agreed in her tenancy and to allow her to reduce her rent until these services are reinstated.

## Analysis

I have considered all the evidence before me, including the affirmed evidence of both parties; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. In the absence of any

Residential Tenancy Branch  
Ministry of Housing and Social Development

corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy as stated on the One Month Notice dated January 18, 2010 and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenants application for compensation for the loss of her satellite service and restricted use of the laundry room. I find the tenant has lost the satellite service she used as part of her tenancy with the previous landlord. While I recognize that the landlord has attempted to provide an alternative service and the tenant has been uncooperative with the landlord in allowing access to her unit for this to happen, her satellite service has still been terminated. I find that the landlord has made every attempt to replace this service with cable but the tenant has been uncooperative in allowing access and the cable contractor did not appear to what to enter the tenants unit without the landlord present. Therefore, no Order will be made for this service to be reinstated.

Section 27(1) of the *Act* states: that a landlord must not terminate a service or facility if it is essential to the tenants' use of her unit as living accommodation or if it is a material term of the tenancy agreement; as I find that satellite TV is not essential to a tenants living accommodation and the tenant is unable to provide evidence that it is a material term of her tenancy agreement I find that section 27 (2) comes into effect. This states that a landlord may terminate or restrict a service or facility other than one referred to in section 27(1) if he gives 30 days written notice of the termination or restriction and reduces the rent to an amount that is equivalent to the reduction in the value of the tenancy agreement resulting in the termination of the service. I find the landlord did not give the tenant 30 days written notice to terminate this service. Therefore I find the tenant is entitled to reduce her rent by \$50.00 per month. As the tenant lost the use of this service on January 19, 2010; I find she may recover the sum of \$25.00 for January and \$50.00 for February and start to pay the reduced rent in March, 2010. Therefore her rent for March will be reduced by \$125.00 to \$325.00 and her rent from April, 2010 will be reduced to \$400.00 or until such a time that the service is reinstated pursuant to section 67 of the *Act*.

With regard to the tenants claim that she has not used the laundry facilities due to the landlords personal property stored in the area and the fact that it may create a confrontational situation

Residential Tenancy Branch  
Ministry of Housing and Social Development

with the landlord. I find the tenant has provided insufficient evidence to support her claim that she has lost the use of this facility because the landlord has used the basement to store his belongings in. The tenant admits that she has continued to use the laundry facilities. A landlord is entitled to upgrade his property and use areas that are not part of a tenancy agreement or are common areas for his use as long as he complies with section 28(d) of the *Act* which states that a tenant is entitled to her right of quiet enjoyment including the use of common areas for reasonable and lawful purposes free from significant interference. I find the landlords' use of the basement area has not impeded the tenants' use of the laundry facilities and the tenant has provided insufficient evidence to support her claim of significant interference from the landlord. Consequently this section of the tenants claim is dismissed.

With regard to the tenants claim that the landlord is living in his RV outside her window and occupying the driveway of the property; the tenant has provided no evidence to support her claim that the driveway is part of her tenancy for which she pays rent. Therefore, I dismiss her claim for compensation for a loss of quiet enjoyment and loss of privacy as this was an issue she should have raised with the previous owner when he first rented this parking space to the landlord in November, 2009.

With regards to the tenants claim that the landlord has not provided her with 24 hours written notice to enter her unit; I find the landlord has provided insufficient evidence to support his claim that he did issue the tenant with the 24 hour notices. The landlord stated that he had a witness to the second notice being served but he did not call his witness to give evidence. In this instance I Order the landlord to comply with the *Act* and ensure he provides the tenant with at least 24 hours written notice before entering her suite. No further conditions will be set for the landlord to suspend his right to enter the tenants unit as I find he has not entered her unit unlawfully.



# Dispute Resolution Services

Page: 7

Residential Tenancy Branch  
Ministry of Housing and Social Development

## Conclusion

The tenant's application to cancel the One Month Notice to End Tenancy is allowed. The one Month Notice to End Tenancy for Cause dated January 18, 2010 is cancelled and the tenancy will continue.

I HEREBY ORDER the tenant to reduce her rent for March, 2010 to \$325.00 and her rent from April, 2010 will be reduced to \$400.00 until such a time that the satellite service is reinstated.

I HEREBY ORDER the landlord to comply with section 29 of the *Act* with regard to his right to enter the rental unit.

The tenants' application for Money owed or compensation for damage or loss is dismissed without leave to reapply.

The tenants' application for an Order to suspend or set conditions on the landlords' right to enter the rental unit is dismissed 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: February 19, 2010.

---

Dispute Resolution Officer