

## **DECISION**

Dispute Codes          CNC, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month 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 and a Monetary Order to recover the filing fee.

The tenant served the landlord 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 and the landlord had a third Party to assist her in the hearing. The Parties 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

- Is the tenant entitled to cancel the One Month Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for loss or damage under the *Act*, regulation or tenancy agreement?

### Background and Evidence

Both Parties agree that this month to month tenancy started on September 01, 2008 and a tenancy agreement was in place which was signed on August 15, 2008. Rent for this one bedroom unit located on the lower floor of a home is \$800.00 per month and is due on the first of each month. The tenant paid a security deposit of \$400.00 on August 15, 2008.

Both parties also agree that the landlord served the tenant with a One Month Notice to End Tenancy on February 27, 2010. This Notice alleges that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written

notice to do so, and the tenant is in non-compliance with an order under the legislation within 30 days after the tenant received the order or the date on the order.

I note that the Parties have now been through three other dispute resolution hearings which were initiated by the tenant. At the first hearing held in January, 2009 the tenant applied to dispute a Notice issued by the landlord because the tenant allegedly smoked on the premises and other issues. At this hearing the matter was settled by agreement of the Parties and an agreement was documented by the Dispute Resolution Officer. Part of this agreement pertains to smoking on the premises. The tenant agreed that he will not smoke inside the rental unit or on the outside property. The tenant will smoke off the rental property.

The landlord testifies that they have once again found evidence that the tenant and or his guests have been smoking on the property. The landlord has provided photographic evidence of a cigarette packet and lighter lying on the ground outside the property and cigarette butts and ash outside the tenants' door and in the rockery and flowerbeds. The landlord argues that the tenancy agreement clearly states that no smoking is allowed in or on the property and is a material term of the tenancy agreement. The landlord also argues that the tenant agreed to this at the hearing held in January 2009. The landlord testifies that her husband has also seen the tenant and two guests smoking on the property on April 02, 2010. The landlord testifies her husband said something to the effect of "Oh sure, you don't smoke on the property, do you D\*\*\*, you are a liar". The landlord testifies that numerous notices have been given to the tenant asking him not to smoke in or on the property.

The landlords' assistant states that the tenant has not complied with a previous order issued under the legislation about not smoking.

The tenant agrees that he has had several notices from the landlord about not smoking and states that he does not smoke. The tenant claims that he tells his friends not to smoke and if they arrive at his door with a lit cigarette he tells them they must put it out. The tenant also claims the cigarette packet and lighter belonged to his cousin and they had fallen out of his cousins' pocket. The tenant claims the landlord is always spying on him and taking photographs when ever his friends come around. The tenant recalled the incident with the landlords' husband and claims he cannot remember what was said but stated that he was not smoking at that time.

The tenant testifies that he finds it stressful to live in his rental unit. He claims that the landlord continually knocks on his door asks him to turn his lights off and his fan. He claims the landlords are always at the property taking photographs and he feels spied upon. The tenant claims the landlord's actions and the stress they cause, consumes his life.

When questioned by the landlords' assistant the tenant states that the landlord asks him at least every other day to turn off the fan and lights but agrees that this has not happened since the last Notice was given. The tenant was unable to specify how many days or dates these requests from the landlord have occurred. The landlord was questioned by her assistant and asked if she ever spied on the tenant. The landlord replied "no never". The landlord states that they do ask him to turn his fan and lights off as the tenant leaves them running and they pay the utility bill.

Both Parties presented other evidence that was not pertinent to the application or my decision. I looked at the evidence that was pertinent and based my decision on this.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the tenants application to cancel the Notice to End Tenancy dated February 27, 2010; I find that the tenant has breached a material term of the tenancy agreement by continuing to smoke or allow others to smoke on the property. The landlords' evidence shows that it is likely that the tenant or his guests have been smoking on the property. As a tenant is responsible for the actions of his guests while they are on the property I must hold him accountable for these actions which are in breach of a material term of the tenancy agreement.

I further find the tenant agreed at a hearing held on January 29, 2009 not to smoke inside the rental unit or on the outside property. The tenant will smoke off the rental property. This agreement was documented in the Dispute Resolution Officers Decision dated January 29, 2009. This agreement would also apply to any guests the tenant had. The Residential Tenancy Branch Rules of Procedure section 16.2 states:

### **16.2 Enforceability of an order prepared under Rule 16.1**

An order prepared by a Dispute Resolution Office under Rule 16.1 [dispute resolution proceeding concluded by agreement of the parties] has the same force and effect as if the

Dispute Resolution Officer made the decision without the agreement of the parties, including but not limited to the enforceability of the order by a court.

Consequently I find the tenant has not complied with an Order made under the legislation within 30 days of the date the tenant received the Order and I find the One Month Notice to End tenancy is upheld and the landlord is entitled to an Order of Possession as requested pursuant to s.55 of the *Act*.

With regard to the tenants application for money owed or compensation under the *Act*, regulation or tenancy agreement; the tenant claims a loss of quiet enjoyment of his rental unit due to the landlords' actions of harassment and invasion of privacy. I have applied a test for damage and loss claims as follows:

- Proof that the damage or loss exists
- Proof that this damage or loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the tenant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the landlord. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find that the tenants claim for compensation does not meet all of the components of the above test. The tenant has submitted insufficient evidence at this hearing to substantiate his claim for compensation of \$1,600.00 due to harassment, invasion of privacy or a loss of quiet enjoyment. The tenant has not shown what steps he took to address the situation or mitigate his loss. I further find the tenant has relayed on evidence put forward for previous hearings which have subsequently been dealt with. He may not rely on this evidence again as it is no longer pertinent to his claim for continued loss of quiet enjoyment. At a previous hearing a decision was made that allowed the tenant to bring a further application for the loss of quiet enjoyment for the period

of time beginning from July, 2009. However, I find the tenant has provided no new or relevant evidence for his claim of continued loss of quiet enjoyment since July, 2009 for this hearing. Consequently, this section of the tenants' application is dismissed.

As the tenant has been unsuccessful with his claim I find he must bear the cost of filing his own application.

### Conclusion

The tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply. The One Month Notice to End Tenancy for Cause dated February 27, 2010 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord 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.

The tenants' application for a Monetary Order for money owed or compensation for damage or loss under the *Act* 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: April 23, 2010.

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Dispute Resolution Officer