



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNL, OLC, RP, PSF, LRE, FF

### Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property; for Orders for the landlord to comply with the Act, regulations or tenancy agreement; to make repairs to the rental unit; for the landlord to provide services or facilities required by law; to suspend or set conditions upon the landlord's right to enter the rental unit; and, recovery of the filing fee paid for this application. Both parties appeared at the hearing and confirmed service of documents upon them. Both parties were provided the opportunity to be heard and to respond to submissions by the other party.

The tenant's evidence package included requests for compensation from the landlord; however, the tenant's application did not include a request for compensation and the tenant did not amend her application to include a request for compensation. I refused to hear testimony regarding compensation and the tenant was informed of her right to apply for such by way of making another application.

### Issues(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is it necessary to issue Orders to the landlord to comply with the Act, regulations or tenancy agreement?
3. Is it necessary to issue Orders to the landlord to make repairs or provide services or facilities required by law?

4. Is it necessary to suspend or set conditions upon the landlord's right to enter the rental unit?

#### Background and Evidence

I heard undisputed testimony as follows. The rental unit is located in a house divided into two living units. In May 2009 the tenant and her son rented both units in the house. The tenant resided in the rear unit and the tenant's son resided in the front unit. The tenant paid rent of \$500.00 per month for the rear unit and the tenant's son paid rent of \$600.00 for the front unit. There was no written tenancy agreement at the beginning of the tenancy. The parties signed a tenancy agreement June 12, 2009 reflecting the tenant was renting the entire house for \$1,100.00 per month. At the end of April 2010 the tenant's son vacated the front unit and the landlord moved into the front unit.

I also heard undisputed testimony that the landlord is the son of the owners of the property. On July 14, 2010 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) indicating the landlord or the landlord's close family member would be occupying the rental unit. The Notice has an effective date of September 15, 2010; however, the landlord subsequently issued a corrected Notice to reflect an effective date of September 30, 2010. Upon enquiry, the landlord stated that his brother, who is the son of the owners, intends to occupy the rental unit.

The tenant stated that she would be moving out by the end of September 2010 and withdrew her request to cancel the Notice. The tenant's right to withhold rent payable for September 2010 was discussed briefly as well as the tenant's right to give the landlord 10 days of written notice to end the tenancy earlier than September 30, 2010.

The tenant complained of unprofessional electrical work being done at the residential property and that she was without power for four days and certain appliances did not work. The tenant explained that the city building inspectors have attended the house

and because the inspectors could not access the front unit a full inspection is being ordered.

The tenant requested the landlord provide her with adequate heat during the remainder of the tenancy as the furnace is not currently working. The landlord acknowledged the furnace is not operating efficiently and explained that he intends to convert the house to baseboard electric heat. The tenant refuted the landlord's testimony that the furnace is inefficient and claimed that the gas has been disconnected to the furnace by Terasen Gas.

The tenant requested the exterior light be turned back on. The landlord agreed to restore the exterior light.

The parties provided disputed testimony with respect to the landlord entering the rental unit. The tenant testified that she had discovered the landlord in her rental unit without proper notice or her consent on three occasions. The landlord claimed that he had the tenant's verbal consent to be in the unit.

Provided as evidence for the hearing was a copy of the Notice to End Tenancy, photographs of the property, the written tenancy agreement, a floor plan of the house and documents regarding electrical inspections.

### Analysis

As the tenant testified she will be vacating the rental unit and withdrew her request to cancel the Notice to End Tenancy I find the tenancy shall end September 30, 2010 pursuant to the Notice to End Tenancy issued by the landlord. The tenancy may end earlier if the tenant gives written notice to end the tenancy earlier in accordance with section 50 of the Act. The parties are also informed that the tenant is entitled to

withhold rent otherwise payable September 1, 2010 as compensation under section 51(1) of the Act. The parties are encouraged to contact the information line of the Residential Tenancy Branch if they have further questions regarding the provisions of sections 50 and 51 of the Act.

As I heard that the city is scheduling a full electrical inspection of the residential property I am satisfied any issues with the electrical system will be addressed by way of that inspection and I make no orders to the landlord with respect to repairing the electrical system.

Having heard from the parties, I am satisfied the furnace is not capable of providing sufficient heat to the tenant. As I heard the landlord is about to convert the residential property to baseboard electric heat I do not order the landlord to repair the furnace; however, **I ORDER the landlord to ensure the tenant is provided with an adequate supply of heat** during the remainder of the tenancy.

In recognition of the landlord's agreement, **I ORDER the landlord restore the exterior light fixture forthwith.**

Under the Act, the tenant is entitled to reasonable privacy under section 28 of the Act. The landlord's ability to enter a rental unit is also restricted under section 29 of the Act. Unless an emergency presents, a landlord must give 24 hour written notice to enter the rental unit or obtain the tenant's verbal consent. The landlord has the burden to show that an emergency required the landlord to enter, that proper written notice was given to the tenant or the tenant gave verbal consent for entry. Having heard from the parties, it is clear to me that the tenant is of the position the landlord has entered the unit without proper notice or consent and the landlord did not provide evidence to show written notice was given or consent was obtained. Therefore, **I ORDER the landlord to comply with section 28 of the Act and I ORDER the landlord to give written 24 hour notice to enter the rental unit in a manner that complies with section 29(1)(b)**

**of the Act the unit unless an emergency exists and entry is required to protect life or property.**

I have reproduced section 28 and 29(1)(b) below for the parties' reference.

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (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;

I award one half of the filing fee to the tenant. The landlord is ordered to pay the tenant \$25.00 forthwith and I provide the tenant with a Monetary Order to serve upon the landlord to ensure payment is made.

### Conclusion

The tenant withdrew her request to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property and the tenancy shall end no later than September 30, 2010 pursuant to that Notice.

The landlord is ORDERED to:

1. Ensure the tenant is provided with an adequate heat supply during the remainder of the tenancy;
2. Restore the exterior light fixture forthwith;
3. Comply with section 28 of the Act and not enter the rental unit unless an emergency exists or the tenant has been given a written 24 hour notice to enter the rental unit in accordance with section 29(1)(b) of the Act.
4. Pay the tenant \$25.00 for one-half of the filing fee paid for this application.

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, 2010.

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Dispute Resolution Officer