



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

Dispute Codes CNC, MNDC, OLC, RR, O

### Introduction

This matter dealt with an application 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 *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order for the landlord to comply with the Act, regulations or tenancy agreement and an Order to reduce rent for repairs, services or facilities agreed upon but not provided.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were sent by registered mail to the landlord on October 09, 2010. The landlord states he received these documents on October 14, 2010.

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

- Is the tenant entitled to cancel the Notice to End Tenancy?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the Act?
- Is the tenant entitled to an Order allowing him to reduce his rent for repairs, services or facilities agreed upon but not provided?



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## Background and Evidence

Both Parties agree that this month to month tenancy started on April 07, 2007. The tenant rents a room in a shared house with three other tenants and all tenants share use of the kitchen, bathrooms and living room as common areas. Rent for this unit is \$450.00 per month and is due on the first of each month. The tenant paid a security deposit of \$225.00 on April 07, 2007.

The landlord states he served the tenant with a One Month Notice to End Tenancy for cause in person on September 28, 2010. 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; the tenant has engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well being of another occupant; the tenant has breached a material; term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord requests an Order of Possession to take effect as soon as possible.

The landlord states the tenant leaves his mess in the living room, bathroom and kitchen and the landlord and other tenants have to clear up after this tenant. The landlord states the tenant has been uncooperative with him concerning his mess and this has significantly disturbed the other tenants residing in the home.

The landlord states the tenant sleeps on the sofa in the common area of the living room and prevents other tenants' from using the sofa and enjoying this area. He states other tenants have complained that the sofa smells of body odours. He states the tenant has on at least one occasion walked to the bathroom naked which was seen by the landlords' caretaker who found it offensive.

The landlord states the tenant has breached a material term of his tenancy agreement as he continues to sleep on the sofa. The landlord states he has asked the tenant in writing to refrain from sleeping on the sofa and to remove his personal belongings from the common areas. The landlord has provided a copy of the letter sent to the tenant on February 02, 2010. The landlord

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has also provided copies of photographs of the tenant asleep on the sofa on March 07, 2010 and pictures of the tenants' belongings in the common areas dated February and March, 2010.

The tenant states he has been the longest tenant residing at the home and has built up an amount of personal belongings. He states he has removed a large amount of these to storage and continues to do so. He states he has left papers and magazines out for other tenants to enjoy but then puts them into the recycling. The tenant states he cleans up after himself when he has used the bathrooms and the kitchen and attempts to keep his mess under control by doing his own dishes after eating and taking out the garbage when it is full and putting out his recyclables items.

The tenant states he has never engaged in an illegal activity. He states he sometimes stays up late to watch the news and occasionally will nod off in front of the television. He states on one occasion he did sleep all night on the sofa when he had locked himself out of his room. He states there is not a pattern of him sleeping on the sofa. The tenant claims with regard to walking from his room to the bathroom naked, this happened early one morning and the only other tenant awake was the caretaker he accepts that this action may have caused offence to the caretaker and now ensures he has on pyjama bottoms when going to the bathroom.

The tenant states he has not breached a material term of the tenancy agreement. He again states he does not make a habit of sleeping on the sofa and is dealing with his belongings in the common areas. The tenant states the landlord has also accused him of letting his wife stay at the unit with him but this has only happened on a couple of occasions and she has not used the common areas. The tenant seeks to cancel the Notice to End Tenancy as he claims the landlords' reasons are false.

The tenant seeks a Monetary Order for \$500.00 in compensation for a loss of earnings having to take time off work to visit the Residential Tenancy Office. The tenant claims he has lost 10 hours of work at \$11.38 an hour to a total sum of \$113.80. The tenant also seeks to recover the costs of express postage of \$22.50 incurred by him in sending the hearing documents to the landlord. The tenant seeks to recover the costs of storage for his belongings and the purchase



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of a clothes hanging box to the total sum of \$128.00. The remainder of the tenants' monetary claim is for his loss of quiet enjoyment of his rental unit due to the landlords' attempts to evict him and the emotional upset this has caused him.

The landlord disputes this section of the tenants claim. The landlord states he should be the one seeking compensation for lost earnings and upset having to deal with the tenants claim. The landlord states he is not responsible for the tenants' costs for storage as the tenant rents a room only from him and is not entitled to additional storage space as part of his rent.

The tenant seeks an Order for the landlord to comply with the *Act* with regards to allowing the tenant to have visitors at his rental unit and with regard to providing the tenant with proper notice before entering the rental property. The tenant also seeks the landlord to post a notice showing the times the tenants can use the laundry facilities and the duties of the caretaker.

The landlord states he has had complaints from other tenants regarding this tenants' wife staying at the rental unit as the common areas are for the tenants use only. The landlord states that after the caretaker mentioned this to the tenant his wife left and has not been there since. The landlord claims the laundry facilities are not included in rent but he allows the tenants to use these facilities on a Friday, Saturday and Sunday as goodwill gesture as long as they take care of the machines.

In the tenants application he also sought a reduction in rent for repairs, services or facilities agreed upon but not provided. During the hearing the tenant could not recall why he had included this in his application and presented no testimony concerning this portion of his claim.

## 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 One Month Notice to End Tenancy; In this matter, the landlord has the burden of proof and must show (on a balance of

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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.

The landlord has not shown that the tenant has significantly disturbed the other occupants of the rental unit and leaving his belongings in the common areas and not cleaning up after himself are not sufficient grounds to end a tenancy. The landlord has not shown that the tenant has engaged in illegal activities. I find that occasionally falling asleep on a sofa or occasionally walking to the bathroom naked, while these actions may be offensive to another tenant, are not illegal. A material term of a tenancy agreement is a term that both parties agree at the beginning of the tenancy is so important that that the most trivial breach of that term gives the other party the right to end the agreement. In this case the landlord has stated that the tenant has breached a material term by sleeping on the sofa and keeping boxes of his belongings in the common areas; however, neither of these actions would constitute a material term of the tenancy agreement nor are they mentioned in the tenancy agreement.

Therefore, in the absence of any corroborating evidence to support the reasons on the Notice to End Tenancy, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenants monetary claim for \$500.00; In this instance I find it is the tenants choice to dispute the one Month Notice to End Tenancy and he choose to file this dispute in person which meant he had to take time off work to do so. Therefore, the landlord would not be responsible to reimburse the tenant for any loss of earnings. Even if the landlord was responsible the tenant has provided no evidence to show what he earns or the actual number of hours taken off work. I find the tenant is also responsible to serve the landlord with the hearing documents and it was the tenants' choice to do so by express mail rather than in person. Consequently, he is not entitled to recover these amounts from the landlord and this section of his claim is dismissed.

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With regard to the tenants claim for storage costs; the landlord is not responsible to pay for the tenants costs incurred in storage for his own belongings and this section of the tenants claim is dismissed.

With regard to the tenants claim for emotional upset and loss of quiet enjoyment due to the eviction notice; a landlord is entitled to serve a tenant with an eviction Notice. The tenant would have to show a significant loss of quiet enjoyment regardless of the Notice to establish a claim for compensation in this matter. The Residential Tenancy Policy Guidelines #6 discusses the right to quiet enjoyment of a rental unit by a tenant and states a tenant would ordinarily have to show a course of repeated or persistent threatening or intimidating behavior to establish his loss of quiet enjoyment. In this instance I find the tenant has not provided sufficient evidence to show the landlord has acted in a persistently threatening or intimidating manner and consequently this section of his claim is also dismissed.

With regard to the tenants application for an Order for the landlord to comply with the *Act*; the tenant states the landlord has included a term on his tenancy agreement which states a tenant is not to have visitors or visitors' overnight stays. The tenant also states the landlord does not give 24 hours written notice to come into the house. Section 30 (1)(b) of the *Act* states a landlord must not unreasonable restrict access to residential property by a person permitted on the residential property by the tenant. Section 29 of the *Act* states a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless he has the tenants permission at the time of entry, he has given 24 hours written notice, he provides housekeeping services, he has an order of the director, the tenant has abandoned the rental unit or if an emergency exists. In this instance the tenant rents a room from the landlord only and as such the landlord is entitled to enter other common areas of the property without giving 24 hours written notice as long as he does not enter the tenants' room.

Consequently, I find the tenant is entitled to an Order for the landlord to comply with the *Act* with regards to allowing the tenant to have visitors at the rental unit but is not entitled to an Order for the landlord to comply with the *Act* with regard to his right to enter the common areas of the property.



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With regard to the tenants claim for the landlord to post laundry times and caretakers duties; there is no provision under the *Act* for the landlord to do either of these things. However, I would suggest the landlord speaks to the tenants to notify them when they may do laundry and what the caretakers' duties are.

With regard to the tenants claim for a rent reduction; as no evidence or testimony has been provide regarding this section of the tenants claim it is dismissed.

## Conclusion

The tenant's application to cancel the One Month Notice is allowed. Therefore, the one Month Notice to End Tenancy for Cause dated September 28, 2010 is cancelled and the tenancy will continue.

**I HEREBY ORDER** the landlord to comply with section 30(1)(b) of the *Act* with regard to access to the rental unit for the tenants visitors or guests.

The remainder of the tenants' application 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: November 08, 2010.

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Dispute Resolution Officer