



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, DRI, ERP, FF, LRE, MT, OLC, RP, RR

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* for Orders as follows:

1. Cancel Notice to End Tenancy for Cause – Section 47
2. Dispute an additional rent increase – Section 43
3. Make emergency repairs for health or safety reasons – Section 33
4. Recover filing fee from the Landlord for the cost of this application – Section 72
5. Suspend or set conditions on the Landlord's right to enter the rental unit – Section 70
6. Allow the Tenant more time to make an application to cancel a Notice to End Tenancy – Section 66
7. Comply with the Act, regulation or tenancy agreement – Section 62
8. Make repairs to the unit, site or property – Section 33
9. Allow a tenant to reduce rent for repairs, services or facilities agreed upon but not provided – Section 65

### Issue(s) to be Decided

- Is the Notice to End Tenancy valid?
- Is the rent increase valid?
- Should the Landlord be ordered to make repairs to the unit, or emergency repairs for health or safety reasons?
- Is the Tenant entitled to reduce rent for repairs, services or facilities agreed upon but not provided?
- Should the Landlord comply with the Act or have conditions placed on him for entry into the Tenants residence?

### Background and Evidence

### Tenancy and Rent

The Tenants began their tenancy on September 16, 2006 with previous landlords. The current Landlord purchased the property sometime in August or September 2010. The Landlord was not sure of the date of purchase.

The original lease indicates that two (2) Tenants signed the lease for a ½ duplex which, according to both the Landlord and Tenant contains 2 separate suites. The monthly rent at the start of the tenancy was \$1,600.00 and remained so until November 2010. Each Tenant paid separate amounts of \$800.00 to the previous landlords and this practice continued with the current Landlord. The Tenant states that starting November 2010, they agreed to a monthly rent increase of \$20.00 each as they felt this was in line with the legislative allowance for a rental increase. The total rent for both suites is now at \$1,640.00, or \$820.00 for each Tenant. The Tenant stated at the Hearing that she no longer wished to pursue this claim.

#### Cause for Ending Tenancy

On February 14, 2010, the Landlord served both Tenants with a 1 month Notice to End Tenancy for Cause. The Landlord's reasons and his arguments for this Notice are as follows:

1. The Tenant is repeatedly late paying rent: The Landlord states that the Tenants were late in paying their rent in October and November 2011. Initially, the Landlord stated that rent for February 2011 was also late but agreed with the Tenant at the Hearing that February rent was in fact paid sometime in January.
2. The Tenant, or a person permitted on the property, has significantly interfered with or unreasonably disturbed another occupant: The Landlord states that the neighbours in the other half of the duplex complained that a person coming from the area of the Tenant's side of the duplex asked to buy drugs from them.
3. The Tenant has engaged in illegal activity that has, or is likely to damage the landlord's property: The Landlord wrote into the Notice beside this cause that the Tenants painted the kitchen cupboards without asking. The Landlord further indicated at the hearing that the Tenants were collecting scrap, junk, construction material, chunks of concrete and old furniture. The Landlord provided a letter from the City of Surrey, dated September 14, 2010, directing the premises to be cleaned.

The Tenant who appeared at the Hearing provided the following reasons and arguments why the Landlord does not have cause as follows in corresponding order:

1. The Tenant states that she has never been late in providing rent but that the Landlord refuses to provide a mailing address or account number for direct deposit and insists on coming in person to pick up rent cheques. The Landlord also refuses to take post-dated cheques for the rent. The Tenant states that the Landlord will come one day to pick up a cheque from the Tenant in the basement suite and a day or so later for the cheque from the Tenant in the upper suite.
2. The Tenant states that she has no idea who that person would be that approached her neighbours for drugs. She states that it is common in her

neighbourhood for people to cross yards in this neighbourhood and has herself been subject to items missing from the yard by the people who do this.

3. The Tenant states that her father is the Tenant in the basement suite and that while he was collecting items for resale and storing them on the rental property, following a discussion with the Landlord and the receipt of the letter from Surrey, this practice was discontinued and mostly cleaned up.

#### Emergency and Other Repairs

The Tenant indicates that there are several repairs needed to the rental unit such as broken cupboards and drawers that the Landlord has failed to complete. In particular, the Tenant is concerned about a broken back laundry room window that occurred by the action of a child in the neighbourhood. This window has been broken since the fall and the Tenant believed that it caused her heating costs to increase over the winter months. The Tenant did not provide any evidence of such an increase in costs. The Tenant further stated that the bathroom in the upper suite was leaking around the bathtub into the downstairs suite and that the Tenant paid for those repairs and provided a paid invoice, dated February 3, 2011, in the amount of \$270.76 for those repairs. The Tenant further states that additional repairs are needed to the tub surround area that is falling apart. The Tenant also provided a paid invoice for \$40.00 for the repair of back stairs.

The landlord indicated that he is prepared to make repairs to the unit and agrees to reimburse the Tenant \$270.76 for the bathroom repairs already done.

#### Entrance into Rental Unit by the Landlord

The Tenant states that the Landlord repeatedly shows up at the rental unit without warning or notice and on at least one occasion, entered the residence after knocking and not receiving a response. On this occasion, the Tenant states that she was in the bathroom when the Landlord walked in and this caused her humiliation. The Tenant further states that the Landlord has been seen creeping around the yard. The Landlord did not deny entry or creeping around the yard but asked whether or not he was allowed at least to be in front of the house on a public street any time he wished.

#### Analysis

Where a Tenant applies to dispute cause for ending a tenancy, the onus is on the Landlord to prove the Notice to End Tenancy was issued on sufficient grounds in order for the notice to be valid. The Landlord has failed to show under the first cause (late rent) that the Tenants have been repeatedly late. There were only 2 occasions last year where the rent was claimed to be late by the Landlord. I further note that the Landlord's own actions have caused those two late rent payments in October and November 2010. The Landlord also failed to provide enough evidence to show "significant interference" or "unreasonable disturbance" for the second cause. In accepting the Tenant's description of common occurrences in the community, one incident as described by the Landlord cannot be said to be significant and further, the Landlord failed to establish on a balance of probabilities, that the one occurrence involved the Tenant or anyone the Tenant may have allowed on the rental property.

The third cause set out by the Landlord appears to be mainly evidence of the accumulation of unsightly materials. Although this may have civil consequences, it cannot be said that the occurrences complained of are “illegal”. Given these findings on a balance of probabilities, I find that the Landlord has not established sufficient evidence of cause on the grounds set out above and I hereby dismiss the Landlord’s Notice to End Tenancy without leave to reapply.

As the Tenant withdrew her claim in relation to the rent increase, I dismiss this part of the Tenant’s claim without leave to reapply.

In relation to the Tenant’s application for repairs, it cannot be found that any of the repairs are emergent in nature, however the Landlord has agreed to make reasonable and necessary repairs. These repairs would include repairs to the bathroom, kitchen cupboards and drawers and the laundry room window. The Landlord further agreed to reimburse the Tenant for the repairs to the bathroom in the amount of \$260.76 and I therefore find that the Tenant may deduct this amount from future rent payable. Given this agreement by the Landlord, the Tenant’s request for an order for repairs is hereby dismissed with leave to reapply should the Landlord fail to make these repairs in a timely manner. Further, as none of these repairs are emergent in nature, I dismiss the Tenant’s application for a reduction in rent, without leave to reapply.

In relation to the Landlord’s entry into the Tenant’s residence, section 29 of the Act sets out the restrictions on the Landlord’s right to enter a rental unit. In accepting the Tenant’s description of incidents of the Landlord’s entry into the residence, I find that the Landlord did not enter the Tenant’s residence with a valid purpose. Consequently, I order that the Landlord may not enter the Tenant’s residence for any reason than those set out by the Act. I therefore dismiss the Tenant’s application to restrict the Landlord’s entry with leave to reapply should the Landlord fail to follow this order.

Finally, I find that the Tenant is also entitled to recovery of the \$50 filing fee, and the Tenant may deduct this amount from future rent payable. The Tenant therefore has a total of \$310.76 that she may deduct from future rent payable.

### Conclusion

I order the Landlord to make reasonable and necessary repairs to the residence in a timely manner.

I grant the Tenant the right to deduct a one-time amount of **\$310.76** from future rent payable to the Landlord.

I Order the Landlord to comply with section 29 of the Act when seeking to enter the Tenants residence.

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: March 08, 2011.

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Residential Tenancy Branch