



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, FF

### Introduction

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

1. An Order cancelling a Notice to End Tenancy for Cause – Section 47;
2. A Monetary Order for damage or loss - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Notice to End Tenancy for Cause (the “Notice”) lists the following causes:

1. Tenant has allowed an unreasonable number of occupants in the unit; and
2. The tenant or a person permitted on the property by the tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on May 1, 2010. Rent in the amount of \$869.55 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$425.00.

On July 5, 2011, the Landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. The Landlord states that the Tenant's wife moved into the unit at some point and that although the Tenant told the Landlord that his wife was going to be moving in, the Landlord states that it is not known when the wife moved in or when the wife stopped being a guest. The Landlord states that the Tenant failed to discuss the occupancy of the wife with the Landlord so that the wife could be added to the lease and that when the Landlord became aware that the wife was in the unit, the Landlord suggested that the Tenant move into a larger apartment. The Landlord believes that the one bedroom unit is too small for a couple. The Landlord claims that by living with the Tenant, the wife of the Tenant is causing the unreasonable number of occupants in the unit.

The Landlord states that the unit was treated for bedbugs and that the Tenant's wife failed to properly bag the laundry on one occasion when using the laundry room. The Landlord states that this is a necessary protocol that must be followed in order ensure the bedbugs do not spread any further and that if the wife did this once, the Landlord believes that this may happen again. The Landlord further states that the Tenant did not give consistent information about the bedbugs by not advising the Landlord about the appearance of the bedbugs for a week after the Tenant became aware of their presence. The Landlord claims that the behaviour of the Tenant and his wife in relation to the bedbugs is possibly contributing to the spread of the bedbugs.

The Landlord states that the Tenant has carried out activities with the other tenants and is inciting a disturbance by the other tenants by organizing a group action. The Landlord states that the other tenants have been approached by the Tenant seeking

support against the Landlords and that this is causing harm to the Landlord by destroying the reputation of the building.

The Tenant states that prior to signing the lease on the unit, he informed the Landlord that he would be getting married following which his wife would move into the unit. The Tenant states that his wife is from another country and that English is not her first language. The Tenant states that when his wife arrived, the Landlord was aware of this event as the Landlord provided the wife with a key. The Tenant denies that the unit is too small for a couple as there are other couples in other one-bedroom units in the building.

The Tenant states that the Landlord's claim that the Tenant is not cooperating with the treatment of the bedbugs and is contributing to the spread of the bedbugs is shocking. The Tenant states that nothing more is wanted by the Tenant than to eradicate the problem. The Tenant states that with the exception of the one incident complained of by the Landlord, his wife always bags the laundry as required by the protocols. The Tenant states that when the Landlord saw the Tenant's wife with the laundry, the wife was only retrieving two items for ironing from the dryer and was walking outside with the items when the Landlord started screaming and yelling. Further, the Tenant states that this incident with the laundry occurred 14 days after the last bedbug treatment, was a one time incident and that the Tenant and his wife are diligent about carrying out preparations and follow-up protocols. The Tenant states that this incident shocked and upset his wife so greatly that she started to look for flights home.

The Tenant states that the Landlord's action in seeking the eviction is in retaliation for an illegal rental increase that the Tenant has refused to pay. The Tenant states that he accepted a rental increase to the legal limit and two days after paying this legal amount in rent, and not the higher amount as called for by the Landlord, he was served with the Notice. The Tenant states further that in July 2011, the Landlord disconnected his internet that had been provided since the beginning of the tenancy and has also told him he could no longer park in the back lot. The Tenant states that when the tenancy

started he was shown the back area and told by the Landlord that he could park on the back lot on a first come first served basis. The Tenant states that the Landlord informed the Tenant that should the Tenant's car be found parked in the back lot, the car would be towed.

The Landlord states that the internet connection was provided to the Tenant while the Landlord had an office in the building and that as this was not provided for in the lease, the Landlord is not required to maintain the internet since the Landlord's office has moved. Further, the Landlord states that wireless internet is currently available on the floor of the Tenant's unit. The Landlord states that he did not inform the Tenant of the availability of the wireless. The Landlord states that the back area is currently oversubscribed with other parkers and that at the start of the tenancy, the Tenant was told he could park in the back area since the Tenant did not have a car at the time.

The Tenant claims a loss of quiet enjoyment and harassment, discrimination, intimidation and persecution by the Landlord, along with a loss or restriction of services and claims the amount of \$5,000.00 in compensation. The Tenant calculates this amount as the equivalent of two month's (July and August 2011) rent, the market value of the internet and parking for two months at \$40.00 per service per month, and the remaining amount is claimed as an amount to compensate the Tenant for pain and suffering caused by the Landlord's behaviour towards himself and his wife.

The Landlord called two witnesses. The first witness stated that since becoming a tenant the Landlord has been accessible and usually attend to problems. The witness states that the Landlord has never yelled or screamed at the witness. The witness states that as a tenant who drives a minibus, there have never been any problems with parking, which has always allowed by the Landlords. The second witness states that he was also reprimanded by the Landlord for not bagging clothes and although the witness was yelled at by the Landlord, the witness did not mind.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Although the Landlord states that the Tenant has not discussed with the Landlord the occupancy of his wife in the unit, I accept the Tenant's evidence that the Landlord was informed at the time of entering the lease that a second person would be occupying the unit with the Tenant. I also find that the Landlord was well aware of the presence of the wife some six months prior to the service of the Notice, as the wife was given a key to the unit by the Landlord. Finally, I do not find that a second person, in particular a spouse of a tenant, is an unreasonable number of occupants in a one bedroom unit. As a result, I find that the Landlord has not substantiated cause for the Tenant having his wife live with him in the unit.

The Landlord provided evidence of one incident where the Tenant's wife did not bag two pieces of laundry that were taken out of the dryer to be ironed. Given that the Tenant's unit was infested with the bedbugs, and that the Tenant and his wife were the direct victims of this infestation, I accept the Tenant's evidence that the Tenant and his wife have done everything necessary in relation to the eradication of the infestation, other than this one incident. As there is no evidence to suggest that this one incident actually caused or was likely to cause further infestation, I find the landlord has failed to substantiate, on a balance of probabilities, that the Tenant or the Tenant's wife caused a significant interference or unreasonable disturbance or that the Tenant or the Tenant's wife seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Landlord's statement that the Tenant has caused harm to the reputation of the Landlord, or that of the building, was provided without any evidence of such harm. As such, I find that the landlord has not substantiated cause for the Notice on this basis. Accordingly, I find that the Notice was issued without valid cause and the Tenant is

entitled to a cancellation of the Notice. I therefore order the Notice cancelled and the tenancy continues.

Given the weak, and near spurious reasons for the Landlord to issue the Notice, I accept the Tenant's view that the Notice was given for other reasons, and specifically for retaliation against the Tenant's refusal to pay an illegal rent increase. This also lends credence to the Tenant's argument that the Landlords have behaved in an unacceptable manner towards him and his wife since the Tenant refused to pay the illegal increase. The Landlord called two witnesses, one of whom spoke in good terms about the Landlords. The other witness however did state that upon the Landlord noticing a breach of the bed bug protocols, the Landlord yelled at him. This also supports the Tenant's position in relation to the manner of the Landlord and the Tenant's claims of abusive behaviour by the Landlord towards the Tenant or his wife. The evidence of the Tenant however, beyond the evidence of treatment of his wife on one occasion, does not establish a significant loss of quiet enjoyment however I also find that the Tenant has established on a balance of probabilities that the Landlord yelled at the Tenant's wife in such a manner as to cause humiliation and that the Landlord carried out acts, such as the restriction of services, in retaliation for the Tenant's refusal to pay the rental increase. I therefore find that the Tenant is entitled to an award for loss of quiet enjoyment and pain and suffering in the amount of **\$600.00**.

Given the provision of internet cable from the beginning of the tenancy, I find that the Tenant is entitled to continue to receive internet access. Given that wireless internet is available to the Tenant but that the Tenant was not informed of this availability until this Hearing, I find that the Tenant suffered a loss of internet for a period of two months due to the act of the Landlord in removing the cable connection and not informing the Tenant of the access to the wireless for the two months. The Tenant is entitled to a monetary award of **\$80.00** for the loss of this service. I also find that as the Landlord provided parking to the Tenant since the beginning of the tenancy, the Tenant is entitled to such parking. Given the loss of parking caused by the action of the Landlord, I find that the Tenant is entitled to a monetary award of **\$80.00** for this loss for the months of

July and August 2011. Should the Landlord continue to restrict the Tenant from parking in the back lot, I find that the Tenant is entitled to the amount of \$40.00 for each month of the continuing tenancy and the Tenant may deduct this amount from future monthly rent payable to the Landlord.

As the Tenant has been successful with the claims, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total monetary award of **\$810.00** (\$600.00 + 80.00 + 80.00 = 50.00).

### Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$810.00**. The Tenant may deduct this amount from the next rent payable to the Landlord. Should the Tenant choose to end the tenancy before the award has been deducted from the rent payable, I provide a monetary award in the amount of \$810.00. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 17, 2011.

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Residential Tenancy Branch