



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC, MT, MNDC, OPC

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated July 2, 2011, a copy of which was submitted into evidence. The tenant was also disputing an excessive rent increase.

The hearing was also to deal with a cross application by the landlord seeking an Order of Possession and monetary order for damages to the property caused by the tenant in the amount of \$400.00.

Both parties appeared and gave testimony in turn.

### **Issue(s) to be Decided**

The tenant is disputing the basis for the Notice and the issues to be determined based on testimony and evidence are:

- Is the One-Month Notice to End Tenancy under section 47 of the Act, warranted, or should the notice be cancelled?.
- Has the landlord imposed a noncompliant rent increase?
- Is the landlord entitled to monetary compensation for damages?

### **Background and Evidence**

The tenancy began in May 2010 on a one-year fixed term and the rent was \$1,000.00. However, after the one-year period, the landlord required that a new lease be signed with rent shown as \$1,200.00. The tenant did not sign the new agreement, but began to pay \$1,100.00 in rent each month after April 2011.

The landlord testified that the tenant had started a bonfire in the front yard of the property too close to flammable items, endangering the property. The landlord testified that the tenant did this despite being advised by the landlord that the municipal bylaws prohibited fires between May and September. The landlord stated that the fire department was called by a neighbor and the municipality warned the landlord that the next time they found a violation, a heavy fine would be imposed on the landlord. The

landlord feared that their own tenancy and livelihood was placed in jeopardy by the tenant's conduct. The landlord felt that the tenant's lifestyle conflicted with the landlord's quality of life.

The landlord stated that this incident prompted the landlord to issued a One Month Notice to End Tenancy for Cause and the landlord is seeking an order of possession.

In addition to the above, the landlord testified that the tenant had damaged a field by driving over it and the landlord is claiming \$400.00 in compensation.

The tenant acknowledged starting the fire but stated that they did not realize the seriousness of the violation at the time. The tenant promised not to repeat the conduct and to refrain from damaging the fields.

With respect to the rent increase, the tenant pointed out that the increase was not in compliance with the Act, but they are willing to pay an extra \$100.00 in rent each month.

The landlord argued that the original tenancy agreement was a fixed term and required renewal as of May1, 2011. According to the landlord, the term with respect to the amount of rent was changed from \$1,000.00 to \$1,200.00 in the new agreement. However the tenant just refused to sign the new lease agreement.

### **Analysis**

In regard to the causes put forth under section 47, I find that the Act imposes a high standard that must be met in proving that the tenant has put the landlord's property at significant risk. I find that to meet this criteria, a genuine hazard must exist and the tenant must be solely to blame. In this instance, I find that the hazard presented by the tenant's conduct was significant, but that it has ended and is not likely to be repeated.

I find that the tenant is now aware that such activity or similar violations of the Act or agreement could result in the termination of this tenancy. This decision serves as a written warning to the tenant of this fact. Given the evidence, I find that the One-Month Notice to End Tenancy for Cause must be cancelled.

With respect to the landlord's claim for the \$400.00 damages, it is important to note that the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement

3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord. I find that based on the lack of evidentiary proof of the damage and the amount of the loss, the landlord's claim does not satisfy all elements of the test for damages and must therefore be dismissed.

With respect to the allegation that the rent increase was not in compliance with the Act, I find that this question depends on whether or not the fixed-term tenancy fully ended and required that the tenant move out.

Section 13 (2) of the Act states that a tenancy agreement must comply with any requirements prescribed in the regulations and must set out the standard terms including ; correct legal names of the landlord and tenant; address of the rental unit; the date the tenancy agreement is entered into; the address for service and telephone number of the landlord The agreement must also feature the agreed terms in respect of the following:

- (i) the date on which the tenancy starts;
- (ii) if the tenancy is a periodic tenancy, whether it is on a weekly, monthly or other periodic basis;
- (iii) if the tenancy is a fixed term tenancy,
  - (A) the date the tenancy ends, and
  - (B) whether the tenancy may continue as a periodic tenancy or for another fixed term after that date or whether the tenant must vacate the rental unit on that date; (My emphasis)

I find under section 13 (2)(f)(iii)(B) of the Act there are only two options: Either the tenancy terminates at the end of the fixed term and the tenant must then vacate which would require a brand new agreement if the parties wanted the tenant to continue to live there OR; it continues on a month to month basis with all the same terms. (My emphasis). If the fixed term contract is silent on the subject – and does not specifically provide that the tenant must vacate at the end of the term, the agreement will automatically continue as a month-to-month tenancy with the same terms.

No copy of the tenancy agreement was in evidence, but apparently there was no specific provision included stating that the tenant must move out at the end of the fixed term. Therefore, I find as a fact that this tenancy continued as a month-to-month tenancy beyond the date of the fixed term, being that nothing in the agreement specified

that the tenancy would completely terminate as of the expiry date. The other terms including the rental rate also continue.

In regard to rent increases, Section 43(1) of the Act states that a landlord may impose a rent increase only up to the amount (a) calculated in accordance with the regulations, (b) ordered by the director on an application under subsection (3), or (c) agreed to by the tenant in writing. The Residential Tenancy Regulation states that any rent increase imposed not in accordance with the Act is invalid.

Therefore I find that the rent increase imposed by the landlord after the expiry of the fixed term was not compliant with the Act and is therefore of no force nor effect.

Based on the testimony, I find that, by consent the rent for the unit is now set at \$1,100.00 per month, and can only be increased in accordance with the Act and Regulations in future.

### **Conclusion**

Based on the evidence and testimony, I hereby order that the One-Month Notice to End Tenancy dated July 2, 2011 be cancelled and of no force nor effect.

On my authority under section 62(1)(b) of the Act, I order that the monthly rent for this unit is \$1,100.00.

The remainder of both applications is dismissed without leave.

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 12, 2011.

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Residential Tenancy Branch