



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LAT, FF

### Introduction

This conference call hearing was convened in response to the tenant's application for cancellation of a 1 Month Notice to End Tenancy; a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; to authorize a tenant to change locks to the rental unit; to dispute an additional rent increase; and to recover the filing fees associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of the notice to end tenancy?

Is the tenant entitled to a Monetary Order, and if so for what amount?

Is the tenant entitled to cancellation of the rent increase?

Is the tenant entitled to recover the filing fee?

### Background and Evidence

The rental unit consists of an apartment in a multi-unit complex. Pursuant to a written agreement, the tenancy started on October 15<sup>th</sup>, 2009. The rent is \$800.00 per month and the tenant paid a security deposit of \$400.00.

The landlord testified that he issued the tenant a 1 Month Notice to End Tenancy on the basis of her damaging the unit and her attitude. He stated that the tenant broke a window that cost \$1100.00 to repair, and that the tenant subsequently called the landlord's employer to have him fired. He stated that on August 15<sup>th</sup>, 2011 an incident occurred where the tenant was screaming and shouting in the hallway, which disturbed another tenant who ultimately moved out. The landlord said that the tenant complained about him to the police and that her behaviour is not acceptable.

The tenant testified that the landlord's version is not accurate. She stated that on August 15<sup>th</sup>, the landlord confronted her in the hallway concerning her request to repair broken windows, and that he became so aggressive that she screamed, ran away, and called the police. She said that the landlord was impatient and irresponsible concerning repairs, told her to move out, and that she received notice to end tenancy the next day. The tenant provided a photograph of her cell phone, showing that the landlord had called around midnight on September 7<sup>th</sup>, 2011; she reported that the landlord yelled at her husband and used extremely foul, disturbing, and offensive language. The tenant said that on September 8<sup>th</sup>, 2011, she received a notice of inspection to take place on September 9<sup>th</sup>, but that the landlord appeared at her front door on the 8<sup>th</sup>. She said that he entered the unit using his own key and that she was coming out of the washroom scantily clad. She said that the landlord videotaped her against her will. She said that the landlord left and that she called the police. She said that the next day she received the landlord's notice of rent increase, with a note indicating that an inspection would be scheduled for some other time.

In her documentary evidence, the tenant provided in part a copy of the Notice to End Tenancy; a copy of the Notice of Rent Increase; a copy of the move-in inspection report indicating that a window was already cracked; and two photographs of cracked windows.

The tenant is seeking compensation for a great deal of mental stress and anxiety, as well as cancellation of the Notice to End Tenancy and the Notice of Rent Increase.

The landlord argued that he conducted the inspection early because he has too many units to manage and does not have time to argue with tenant, that he also knows that tenants may ruin the rental unit if given the allowed time, and that he knocked before opening the door. He said that he questions why the tenant is not moving out if she is telling the truth about his behaviour. He said that the tenant was wearing a normal dress and that he videotaped the cracked windows for evidence. The landlord referred to a letter dated September 5<sup>th</sup>, 2011 from a neighbour stating that on August 16<sup>th</sup>, she heard the tenant saying in Chinese that she was going to burn the building down and would like to be a witness for the landlord to challenge the tenant's false statement.

### Analysis

In this matter the burden was on the landlord to prove that he had grounds to issue the 1 Month Notice to End Tenancy. I have reviewed the documents submitted and the testimony of both parties at the hearing. I am satisfied that an incident occurred on or about August 15<sup>th</sup>, 2011 and that a disturbance did occur within the building. The parties' version of what caused the disturbance was at odds; however I do find that it was an isolated incident; outside of this, the landlord's testimony was non-specific and did not provide further evidence to support his grounds to issue the notice, specifically; that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord; that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; that the tenant adversely affected the quiet enjoyment, security or safety of another occupant; or that she jeopardized a lawful right or interest of another occupant or the landlord. Nor has the landlord proven that the tenant damaged the property, as the documentary evidence points that the cracked windows were pre-existent.

The landlord's timing surrounding the notice to end tenancy does appear questionable; he did not call any witnesses, nor did the former tenant who wrote the letter appear for this hearing. That letter makes reference to the tenant's "false statement": this comment does not specify what the false statement was; it was not supported by any evidence

and it appears biased. On the preponderance of the evidence I am not satisfied that the landlord had grounds to issue the 1 Month Notice to End Tenancy and therefore I order the notice to be set aside.

I also find the timing of the Notice of Rent Increase to strangely coincide with this confrontation. The landlord provided no evidence or explanation for issuing the notice which appears, under the circumstances, to be issued as an attempt to coerce the tenant to move out. Therefore I also order that notice to be set aside.

I also find that the landlord's actions were intimidating and inappropriate. The Act provides the tenants with a right to privacy; Section 29 (1) states in part that a landlord **must not** enter a rental unit for any purpose unless the tenant gives permission at the time of entry, and only when the landlord gives the tenant written notice at least 24 hours before the entry. The landlord entered without lawful authority and continued to videotape the tenant without her permission. The landlord breached the Act and his actions were intrusive. Since this was also an isolated incident, I will not order a change of the locks however; I find that the tenant lost quiet enjoyment during this unannounced visit. Therefore I grant the tenant a one-time rent reduction of \$200.00 for that loss, and I order the landlord to comply with section 29 of the Act concerning his access to the rental unit. If the landlord fails to comply, the tenant is at liberty to make further application for dispute resolution and request further rent reduction.

Concerning the cracked windows, the landlord has a duty of care and statutory obligations towards a tenant. The evidence does not support that the landlord was assertive in attending to the cracked windows. However these repairs are not an emergency and the tenant is able to continue to reside in the rental unit without limitation. S 32(1) of the Act provides in part that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and to make it suitable for occupation by a tenant. If he has not already done so, I order the landlord to repairs the windows by no later than October 7<sup>th</sup>, 2011.

Conclusion

The 1 Month Notice to End Tenancy is set aside and the tenancy will continue. The Notice of Rent Increase is also set aside.

The tenant established a claim of \$200.00. Since she was successful, she is entitled to recover the filing fee of \$50.00 for a claim totalling \$250.00.

I authorize the tenant to a one-time rent reduction of \$250.00, which she can deduct from the next month's rent for a rental payment of \$550.00.

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: September 21, 2011.

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Residential Tenancy Branch