



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

1. Should the Notice to End Tenancy be upheld or cancelled?
2. Is it necessary or appropriate to issue Orders for compliance to the tenant?

### Background and Evidence

The rental unit is a three bedroom, older mobile home located on a parcel of land adjacent to the landlord's home. The tenant has been residing in the rental unit since 2002. The tenant had a verbal tenancy agreement with the former owner starting in 2002 and then September 11, 2003 the tenant and the current owner entered into a written tenancy agreement. The tenancy agreement provides that the tenant shall pay rent of \$740.00 on the 1<sup>st</sup> day of every month. On September 14, 2011 the tenant was served with a 1 Month Notice to End Tenancy for Cause (the Notice) with an effective date of October 31, 2011. The tenant disputed the Notice within the required time limit. The Notice indicates the following reasons for ending the tenancy:

- Tenant has caused extraordinary damage to the unit/site or property/park
- Tenant has not done required repairs of damage to the unit/site
- Tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord's representative submitted that the tenant is required to perform routine maintenance work on the mobile home and residential property and that this requirement is pursuant to a verbal agreement reached with the tenant in exchange for

reduced rent of \$740.00 per month. The tenant has failed to adequately maintain the property or report maintenance issues to the landlord pursuant to the “maintenance agreement”. The tenant submitted that the landlord’s expectation of what the tenant is responsible for repairing and maintaining exceeds what he agreed to do.

Below I have summarized the submissions of the landlord with respect to damage the landlord attributes to the tenant’s actions or neglect and the tenant’s response to the landlord’s submissions.

<u>Landlord submission</u>	<u>Tenant response</u>
The tenant failed to repair or report leaks from the roof and awning over deck.	Tenant is not responsible for repairing roofing. Tenant had advised landlord several times that roof requires replacement.
Tenant’s dog urinated on rugs in rental unit accordingly to statements made by former occupant.	Tenant’s dog urinated on tenant’s rugs on the deck. Wood floors in living room were installed by tenant. Letter from former occupant is unreliable as former occupant has mental illness.
Door frame scratched by tenant’s dog.	Tenant acknowledged damage by dog.
Toilet tank lid damaged by tenant.	Tenant acknowledged he is responsible for this damage.
Kitchen countertops have several cut marks.	Tenant acknowledged he or his roommates likely caused some cuts but also pointed out countertops are approximately 40 years old.
Tenant has allowed excessive junk and clutter to accumulate on property.	Tenant acknowledged there are junk piles in yard but not all items are garbage. Piles are not visible from road.
Damaged plug.	Tenant denies he is responsible for this damage to plug.
Tenant failed to replace caulking in bathroom.	Landlord installed new caulking and it is already coming out.
Tenant covered smoke detector with tape.	Tenant acknowledged he put tape on the smoke detector because it is very loud.
Downspout not connected to eavestrough.	Downspout has been falling off for years. The tenant periodically reconnects it.

The landlord's representative submitted evidence that the tenant has posted advertisements for rooms for rent in the rental unit and has assigned or sublet the rental unit without the landlord's consent.

The tenant acknowledged that he has rented out one or two of the bedrooms in the past but that he always occupied and resided in the rental unit. Currently, only the tenant's girlfriend lives with the tenant.

Evidence for this proceeding included: the tenancy agreement; the 1 Month Notice; a statement of the former occupant; invoices and receipts for repairs; certain pages of the landlord's calendar; advertisements for the property when it was for sale and for room rental; letter from the landlord to the tenant dated September 29, 2011; and, photographs of the property. Also provided were written submissions of both the landlord and tenant.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove, based on the balance of probabilities, that the tenancy should end for the reasons indicated on the Notice.

### ***Extraordinary Damage caused by tenant/Damage not repaired by tenant***

Upon review of the written tenancy agreement I find no provision for maintenance work required of the tenant; however, both parties submitted that there was a verbal discussion about repair and maintenance work the tenant do during the tenancy. Therefore, I have considered whether the verbal agreement is enforceable under the Act.

Section 6(3) of the Act provides for enforceability of rights and obligations under a tenancy agreement. It provides that:

- (3) A term of a tenancy agreement is not enforceable if
  - (a) the term is inconsistent with this Act or the regulations,
  - (b) the term is unconscionable, or
  - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 32 of the Act provides for the obligations of both the landlord and tenant to repair and maintain a residential property. I find any requirement that the tenant repair and maintain the property that exceeds the requirements of section 32 to be inconsistent with the Act and unenforceable.

Furthermore, it is clear the parties have a different recollection as to what was agreed upon by way of the verbal agreement. Accordingly, I find the verbal agreement the landlord is relying upon is not expressed in a manner that clearly communicates the rights and obligations under it.

In light of the above, I reject the landlord's position that the tenant is responsible for damaging the property by failing to repair and maintain items for which the landlord is responsible for repairing under section 32 of the Act. Accordingly, I hold the tenant responsible for repairing and maintaining the property as provided by section 32 of the Act.

Section 32 states:

**Landlord and tenant obligations to repair and maintain**

**32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Residential Tenancy Policy Guideline 1 also provides guidance for landlords and tenants as to their responsibilities to repair and maintain a property.

Items for which the landlord is responsible for repairing and maintaining include: the roof, the deck awning, windows, the eavestroughs and downspouts, caulking in the bathroom, electrical outlets, and, the furnace. Therefore, in order to end the tenancy for damage to these items, I have to be satisfied the tenant damaged the items due to his actions as opposed to normal deterioration due to aging or normal wear and tear. I find insufficient evidence the tenant damaged these items.

With respect to the written statement of the former occupant, dated September 28, 2011, I have placed little evidentiary weight upon that document. The statement was apparently prepared by the landlord after the landlord issued the 1 Month Notice and after the tenant disputed the Notice. Further, the document is purportedly signed by the former occupant; however, the signature is not verifiable and the observations of the former occupant were could not be further examined or questioned without her presence at the hearing.

I am not satisfied the moisture problems in the rental unit are the result of the tenant's actions when I consider the tenant's submissions that the furnace does not work, the roof is leaky and the windows are old and thin. Having heard the furnace has not worked in years, if the landlord wishes the tenant to use the propane furnace, it is recommended the landlord have the furnace inspected and serviced. Otherwise, the landlord must ensure there is alternative heat source available to provide the tenant the ability to heat the unit to at least room temperature. In addition, any roof issues should be investigated and repaired by the landlord as necessary.

With respect to dog urine on the carpeting, I find I am not satisfied the carpets belong to the landlord or are part of the rental unit given the tenant's statements that they are his carpets and the landlord's photographs show the carpets outside on the deck. Although the landlord's representative suggested that urine would soak through the carpets onto the wood flooring, I find insufficient evidence that the wood flooring was damaged as a result.

The Act provides that normal wear and tear is not damage as items will naturally deteriorate due to the aging process and normal use. Accordingly, I find that cuts in the kitchen countertop do not satisfy me this tenancy should end for damage or extraordinary damage when I consider the age of the countertops and I find insufficient evidence the plug was damaged by something other than normal use or aging.

I am satisfied the tenant is responsible for repairing the damaged toilet tank lid; however, I do not find this damage so significant as to warrant an end to the tenancy in light of the fact the landlord did not request the tenant make this repair, in writing, before issuing a Notice to End Tenancy. Rather, I find it appropriate to **ORDER the tenant to replace the toilet tank lid within 30 days of receiving this decision.**

I am satisfied the tenant has permitted an excessive amount of junk and clutter to accumulate in the yard. In the absence of evidence showing the landlord requested the tenant remove these items, in writing, before issuing the Notice to End Tenancy I find it appropriate to **ORDER the tenant to remove the clutter from the yard within 30 days of receiving this decision** but I do not end the tenancy at this time.

I am satisfied the smoke detector must be free of tape for safety reasons; however, I did not find sufficient evidence that the tape stopped the detector from detecting smoke and sounding an alarm. Accordingly, I do not end the tenancy for this reason but I do **ORDER the tenant to remove the tape from the smoke detector immediately and ensure it remains free of tape or other inhibitors.**

#### ***Assign/Sublet of rental unit***

Having heard the tenant has occupied and resided in the rental unit while having roommates I reject the landlord's submission that the tenant has assigned or sublet the rental unit. Where a tenant resides in the rental unit and has additional persons reside with him, those persons are referred to as occupants.

The tenancy agreement provides for additional occupants in clause 10. Clause 10 does not prohibit the tenant from having additional occupants. Rather, it provides that if the number of permanent occupants is unreasonable, the landlord may serve a Notice to End Tenancy upon the tenant. The landlord has not issued a Notice to End Tenancy for the tenant having an unreasonable number of occupants.

For all of the reasons given above, I cancel the 1 Month Notice with the effect that this tenancy continues. The parties are informed that **should the tenant fail to fulfill the ORDERS issued with this decision the landlord may issue another Notice to End Tenancy for non-compliance with an Order under the Act.**

Since the tenant was successful with this application I award the filing fee to the tenant. The tenant is authorized to withhold \$50.00 from a subsequent month's rent in satisfaction of this award.

Conclusion

The 1 Month Notice issued September 14, 2011 is cancelled and the tenancy continues. The tenant has been issued three ORDERS with this decision. The tenant may deduct \$50.00 from a subsequent month's rent to recover the filing fee paid for this application.

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: October 20, 2011.

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Residential Tenancy Branch