

## **DECISION**

Dispute Codes      CNC, OLC, ERP, RP, LRE, FF

### Introduction

This is an application filed by the Tenant to cancel a notice to end tenancy issued for cause, a request for an order for the Landlord to comply with Act, to make emergency repairs, to make repairs, to suspend or set conditions on the Landlord's right to enter the rental unit, to allow access to (or from) the unit for the Tenant's guests and recovery of the filing fee.

Both parties attended the hearing by conference call and have confirmed receipt of the submitted evidence package of the other party. As both parties have attended and each has confirmed receipt of the others evidence submitted, I am satisfied that both parties have been properly served with the notice of hearing and evidence package under the Act.

During the hearing it was clarified with the Tenant that the portions of the application dealing with emergency repairs and repairs are withdrawn as those portions of the claim have been resolved. It was also clarified that the Tenant's application to be allowed access to the unit for the Tenant's guests was just an inquiry as she states that the Landlord has not restricted access for guests. These portions of the Tenant's application need not be addressed.

### Issue(s) to be Decided

Is the Tenant entitled to an order to cancel the notice to end tenancy for cause?  
Is the Tenant entitled to an order for the Landlord to comply with the Act and have a suspension or conditions set on the Landlord's right to enter the rental unit?

### Background and Evidence

Neither party have submitted a copy of a signed tenancy agreement, but both confirm that this tenancy is on a month to month basis. The Tenant states that this tenancy began in 2005. Both parties agree that the Tenant rents a room with a private bathroom and share a living room and kitchen.

The Tenant has submitted a copy of the 1 month notice to end tenancy for cause dated March 5, 2012 with an effective date of April 30, 2012. The Landlord has confirmed in his direct testimony that he signed and dated this notice and delivered it personally to the Tenant on the same day. The Tenant has confirmed receipt of the notice. The notice provided states two reasons. The first reason is; Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk. The second reason on the notice is; Rental unit/site must be vacated to comply with a government order. The Landlord stated that he did not select the second reason indicated on the notice and does not know why it is on the notice. The Landlord claims that this was not listed on the original notice. The Landlord has provided two causes for the Tenant putting the Landlord's property at significant risk. The Landlord states that the Tenant has left personal belongings in the common areas; hallway and living room. These items are shown in photographs submitted by both parties. These items are shown as a plastic storage box, mixed bag of clothing and books and a foldable laundry bag with some clothing inside. The Landlord claims that these items clutter the common areas and create an inconvenient and unpleasant environment to the other tenants as well as cause a potential safety hazard. The Tenant disputes this and has provided two letters from other Tenants that share the space regarding the personal items and that they are negligible and do not pose any safety concerns. The Landlord states that one of the Tenants (who is a relative) has children and that the items left out could cause harm. The Landlord's second cause is that the Tenant leaves her bathroom exhaust fan on for long periods of time and that this could cause an electrical fire. The Landlord states that he has had a plumber attend who has some knowledge other trades tell him that the fan could burn out. The Tenant confirms this stating that she sometimes leaves the fan on for approximately 8 hours because she fears the growth of mold if she does not leave the fan on to dissipate the moist air left from showering. The Landlord states that he has smelt burning coming from the Tenant's bathroom fan when it was left on. The Tenant disputes this and as well states that she has never been given notice that the Landlord has attended to inspect the fan with any tradespersons.

The Tenant also seeks restrictions placed on the Landlord from entering the rental unit without permission or notice. The Tenant states that the Landlord frequently attends the rental common areas without permission. The Tenant has also provided letters from the other Tenants supporting this.

### Analysis

On a balance of probabilities, based upon the evidence submitted by both parties, I find that the Landlord has failed to establish his claim that the property is at risk. The

photographs submitted by both parties clearly show that the personal items do not pose a risk to the property. This is also supported by the letters from two other Tenants living in the unit. The items noted do not block or restrict any type of access in the areas noted. As for the Landlord's claim that by leaving the bathroom fan on for excessive durations, I find that the Landlord has failed to provide any evidence that would support his claim that this could cause an electrical fire. The Landlord states that he had someone in to inspect it but that no work/repairs were done or were needed. I find that the Landlord has failed to establish their reasons for cause. As such, the notice dated March 5, 2012 is set aside and the Tenancy shall continue.

As for the Tenant's request to have the Landlord comply with the Act and to suspend or set conditions on the Landlord's right to enter the rental unit, I find that the Tenant has failed to establish that the Landlord is illegally entering the unit without permission. However, some details have been mentioned in the letters provided by the other Tenants over the Landlord's entrance into the common areas. The Landlord is required under the Act in Section 29 which states,

**Landlord's right to enter rental unit restricted**

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

In this case where the common areas are shared, the Tenants do not have exclusive rights and cannot prevent the Landlord from entering this area if invited by one of the Tenants. However, the Landlord must comply with the section 29 of the Act when accessing those exclusive areas (bedroom and bathroom) that the Tenant has possession of.

The Tenant is entitled to recovery of the \$50.00 filing fee. I order that the Tenant may withhold from the next months rent due for May 2012 a one-time amount of \$50.00 to recover the filing fee.

### Conclusion

The Tenant's application is granted and the notice dated March 5, 2012 is set aside and the Tenancy shall continue.

The Tenant's application for the Landlord to comply with the Act and have conditions set on the Landlord's right to enter the rental is dismissed.

The Tenant may withhold \$50.00 from the May 2012 rent due to the Landlord.

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 28, 2012.

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Residential Tenancy Branch