



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, OLC, ERP, RP, PSF, LAT, RR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; a monetary order; and orders to have the landlord comply with several sections of the *Residential Tenancy Act (Act)*, regulation or tenancy agreement.

The hearing was conducted via teleconference and was attended by both tenants; the landlord and his agent. The landlord's agent had arranged for two witnesses but due to time constraints neither witness was called.

During the hearing, the landlords did not verbally request an order of possession should the tenants be unsuccessful in their Application.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order for compensation for damage or loss; for orders to have the landlord complete repairs; emergency repairs; provide services or facilities required by law; for orders to allow the tenants to change the locks to the rental unit and to reduce the rent for repairs; services or facilities agreed but not provided; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 26, 31, 32, 33, 47, 67, and 72 of the *Act*.

### Background and Evidence

Both parties provided a copy of a tenancy agreement signed by both parties on May 14, 2012 for a 1 year fixed term tenancy beginning on June 1, 2012 for a monthly rent of \$1,795.00 due on the 1<sup>st</sup> of each month with a security deposit of \$897.50 paid.

The parties also provided a copy of a 1 Month Notice to End Tenancy for Cause dated June 9, 2012 with an effective vacancy date of July 31, 2012 citing the tenants or a person permitted on the property by the tenants has significantly interfered with or unreasonably disturbed another occupant or the landlord; put the landlord's property at significant risk; the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property; the tenant has caused extraordinary damage to the unit or property; and a security or pet damage deposit was not paid within 30 days as required by the tenancy agreement. The landlord's agent confirmed that he did not serve the tenants with the notice until June 25, 2012.

While the tenancy agreement did not require a pet damage deposit at the time of signing it does include a clause allowing the tenants to have a cat and the addendum to the agreement entitled "Rules and Regulations" includes a clause that states: "No pets allowed with PRIOR WRITTEN PERMISSION AND A PET DEPOSIT. A picture of your pet WILL be required..."

The landlord's agent testified that when he found out the tenants did have a cat he requested that they pay a pet damage deposit of \$200.00. The tenants testified that the landlord knew they would be bringing in a cat and that there was never any mention of a pet damage deposit.

The landlord's agent testified that when the tenants did not pay the pet damage deposit he issued them a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and has submitted a copy of this notice into evidence.

The landlord's agent confirmed he was not aware of any illegal activity and testified that he did not intend to use that reason as a cause to end the tenancy.

The tenants submit that when they viewed the rental property they were promised that a number of things would be completed prior to move in and that when they moved in on June 1, 2012 several of these items were not completed and that as a result they did not pay rent on the 2<sup>nd</sup> and after meeting with the landlord and being assured everything would be completed by June 15, 2012 they paid the rent for June 2012.

The tenants also submit that the landlord's agent stop responding to their concerns or when he did and promised to come by he either didn't come by or was very late. The tenants assert that they do not want to deal with the property manager and that they started dealing directly with the landlord and would prefer to deal only with the landlord.

The landlord acknowledges that the tenants were having difficulty with the property manager so he began to attempt to work with the tenants in an effort to mediate between his property manager and the tenants. The landlord testified that he has no intention of dealing with the tenants and that, in fact, is precisely why he hired a property manager in the first place.

The landlord testified that he had made arrangements for a contractor to attend the rental unit last week and when he was arranging for a time for he; the contractor; and the property manager the tenants threatened to call the police of the property manager were to attend the property.

The landlord also testified that the tenants had failed to pay rent for the month of July and it was not until several days after serving the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent. The tenants assert that they had rent available but that the landlord never came to collect it.

The tenancy agreement includes Clause 5(a) that states: "The Tenant shall pay monthly, in advance to the Landlord at the landlord's address set forth above a rental of \$1,795.00 per month (the "Rent") on or before 12:00 noon on the first day of each month."

The landlord submits that as a result of the tenants refusal to deal with her property manager, including threats to call the police if the property manager attends the property, and the failure to pay rent when it is due for both months of this new tenancy the tenants are significantly interfering with the landlord's right to conduct his business.

The landlord asserts that the tenants have caused damage and extraordinary damage to the rental unit by removing a grate on a door at the bottom of exterior stairs; damage to a window latch; and removal of caulking and waterproofing in the bathroom.

The tenants seek orders to have the landlord complete emergency repairs and repairs but they have not provided, into evidence, any particular list of repairs or emergency repairs that they requested nor have they provided any written requests to the landlord about specific repairs.

The correspondence provided shows the tenants continually identify that there is cleaning required (or completed by the tenants); repairs to the bathroom and kitchen (not identifying any specific repairs or emergency repairs); and then work that the tenants have completed on the property themselves.

From the testimony provided by both parties the parties I accept that both parties are aware of specific requests the tenants are making but the landlord indicates that most of the repairs sought were over and above any promises made and that the tenants are seeking to have all services and facilities upgraded to new.

The tenants provided no testimony that would justify their request to allow them to change the locks to the rental unit. The tenants seek to have a rental reduction of \$595.00 for 6 months for repairs agreed upon but not provided.

The tenants also seek compensation in the amount of \$5,000.00 to compensate them for the rent they have paid for June and July and their security deposit because the landlord has not provided them with the unit in a condition that they expected. While the rent and security deposit paid by the tenants totals only \$4,487.50 the tenants did not provide any explanation of what the additional \$512.50 is intended to compensate them for.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to 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 having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

From the evidence and testimony of both parties I find the tenants have not provided evidence that the landlord has failed to comply with Section 32 of the *Act*. In addition, as the landlord disputes the extent of repairs the tenants expected and in the absence of any supplementary evidence I find the tenants have failed to establish the landlord has breached any agreement on repairs.

For these reasons I find the tenants have failed to establish they have suffered a loss or damage as a result of a violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of the tenants' Application.

In relation to the 1 Month Notice to End Tenancy, I find, based in part on the tenant's testimony, that the tenants are taking actions that impede the landlord's ability to manage the property and tenancy in accordance with the *Act*, regulation and tenancy agreement, as follows:

1. The tenants admitted that when the rental unit appeared to not be in a condition that they determined to be acceptable at the start of the tenancy they did not pay the rent on June 1, 2012. As a result, I find the tenant breached Section 26 of the *Act* by failing to pay rent when it was due under the tenancy agreement;
2. Despite the clause in the tenancy agreement and the requirement under Section 26 of the *Act* the tenant blames the landlord for not collecting it. There is no requirement under the *Act* for the landlord to collect rent but there is a requirement for the tenant to ensure it is paid under Section 26. If the tenants were unsure of how to get it to the landlord it was the tenants' responsibility to find out how. I find, based on the testimony of both parties, the tenant was deliberately not paying rent when it was due, and again deliberately breached Section 26;
3. I find the tenants refusal to have the landlord's agent act on the landlord's behalf and desire to only deal with the landlord and their threats to engage police if the

agent comes to the property is a significant interference against the landlord's ability to complete his obligations and enforce his rights as provided for under the *Act*, regulations and tenancy agreement, that include appointing an agent to act on his behalf.

I find these breaches and actions taken by the tenants to be sufficient cause and of such a significant impact that the landlord has established adequate cause to end the tenancy in accordance with the 1 Month Notice served on June 25, 2012.

As I have found the landlord has established cause to end the tenancy and in recognition that the remaining issues in the tenants' Application are for orders appropriate for a continuing tenancy including orders for repairs; emergency repairs; services or facilities required by law; allowing the tenant to change locks; and reduced rent, I dismiss these remaining issues in the tenants' Application.

### Conclusion

For the reasons noted above, I find the 1 Month Notice to End Tenancy for Cause served by the landlord to the tenants on June 25, 2012 is valid and the tenancy will end on the effective date of that notice.

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: July 17, 2012.

---

Residential Tenancy Branch