

## **DECISION**

Dispute Codes      CNR, CNC, MNDC, MNSD, OLC, PSF, RPP, LRE, OPT, AAT, LAT, RR, FF

### **Introduction**

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

- An Order cancelling a Notice to end Tenancy for Cause;
- An Order cancelling an Notice to end tenancy for unpaid rent;
- An Order of Possession;
- A Monetary Order for compensation for damage or loss under the Act;
- A Monetary Order for return of all or part of pet damage deposit or security deposit;
- An Order that the Landlord:
  - Comply with the Act, regulation;
  - Provide services or facilities required by law ;
  - Return the tenant’s personal property ;
- An Order to suspend or set conditions on the landlord’s right to enter the rental unit;
- An Order to allow access to the unit for the tenant or the tenant’s guests;
- An Order authorizing the Tenant to change the locks to the rental unit;
- An Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and
- An Order for the recovery of the filing fee.

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

Are the Notices to end tenancy valid?

Is the Tenant entitled to a cancellation of the Notices to End Tenancy?

Is the Tenant entitled to an Order of Possession?

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to orders that the Landlord comply with the Act, provide services, and return the Tenant’s personal property?

Is the Tenant entitled to having conditions set on the Landlord’s right to enter the unit?

Is the Tenant entitled to access to the unit?

Is the Tenant entitled to change the locks of the unit?

Is the Tenant entitled to an order for a reduction in rent for facilities agreed upon but not provided?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy of a coach house started on January 15, 2012. Rent of \$900.00 is payable on the first day of each month. At the onset of the tenancy the Landlord collected \$450.00 as a security deposit.

On May 31, 2012, the Landlord states that the Notice to end tenancy for cause (the "Cause Notice") was personally served on the Tenant. The Landlord states that mostly all dealing with the Tenant were with the Landlord. There is no dispute that the Cause notice lists the following cause:

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

The Landlord states that he has no evidence to provide other than his oral evidence that since April 2012 the Tenant has made five or six calls to the police on invalid issues with the Landlord who installed a surveillance camera on the property. The Landlord also states that the Tenant called the Landlord at work and spoke to the Landlord's employer about complaints. The Landlord states that the Tenant placed the Landlord's family at risk by yelling, screaming and calling them names in front of neighbours. The Landlord states that the Tenant made threats of physical violence. The Landlord states that the threats were never reported to the police.

The Tenant denies making threats and states that the calls to the police were instigated by the Landlord and that on at least one occasion, the Tenant believes the Landlord did call the police. The Tenant denies yelling and screaming or calling the Landlord at work. The Tenant states that he only called the police after the Landlord disconnected the heat, cable, electricity and laundry access on June 1, 2012.

The Landlord states that the Tenant failed to pay rent for June 2012 and that on June 2, 2012, the Landlord personally served the Tenant with a Notice to end tenancy for unpaid rent (the "Notice"). The Tenant states that rent for June 2012 was paid and provided a copy of a bank draft made out to the Landlord for the rent, dated May 28, 2012. The Tenant also provided copies of bank drafts for rent for every other month of the tenancy. The Parties agree that the Tenant would leave the bank drafts at the Landlord's door each month. The Tenant states that when he was served with the Notice that he asked the Landlord several times to resolve the issue and that the Tenant offered to issue a new bank draft to the Landlord but the Landlord refused. The Landlord states that the Tenant never approached the Landlord with a replacement cheque.

The Tenant made an application to dispute the Cause Notice and the Notice on June 8, 2012. The Tenant states that this application was served on the Landlord on June 12 or 13, 2012 while in the company of a police officer. The Landlord states that the application was served to him on June 15, 2012. The Parties agree that the Tenant's amended application was served on the Landlord on June 16, 2012.

The Tenant states that issues with the tenancy started shortly after the onset of the tenancy and that on April 14, 2012 the heat to the unit was turned off. The Tenant states that this was remedied shortly after texting the Landlord to return the heat but that again on May 25, 2012, the heat was turned off. The Tenant states that the heat was not turned on for a couple of days. The Tenant states that the Landlord also took over the Tenant's dedicated parking spot and then harassed the Tenant about parking on the lane and threatened to tow the Tenant's car. The Tenant states the Landlord started to restrict his access to the laundry facilities by limiting his days or times of use. The Tenant states that although no written agreement was entered into, the unit was advertised as including in the rent a separate washer and dryer, utilities, cable and internet and that these were provided at the onset of the tenancy.

The Tenant states that on June 1, 2012, the Landlord shut off his heat, disconnected the cable and totally restricted access to laundry and the parking spot. The Tenant states that he believes that as the Landlord moved into the property containing the coach house at the same time as the Tenant that the Landlord discovered the coach house was rented lower than surrounding coach houses and wanted to get rid of the Tenant in order to re-rent the unit for a higher price. The Tenant states that a day before he was locked out of the unit, the Landlord threatened the Tenant's son and followed the Tenant's son to work. The Landlord states that the Tenant's parking spot was only restricted for a couple of days and that no threats were ever made towards the Tenant's son. The Landlord denies all the statements of the Tenant and states that on June 12, 2012, the Tenant's unit was found with only a few items in the fridge, the heat was turned on high and the windows were open.

The Landlord states that the Tenant moved out on June 9 or 10, 2012. The Landlord states that on one of these dates the Tenant was observed on the surveillance video moving furniture out of the unit. The Landlord states that he spoke with the Residential Tenancy Branch on June 11, 2012 and was informed that he was able to take possession of the unit on the basis of abandonment. The Landlord states that he entered the Tenant's unit at 2:00 a.m. on June 12, 2012 and that things were mostly gone. The Landlord states that he then acted on the belief that the unit was abandoned and that he was entitled to take possession of the unit. The Landlord states that with the attendance of police on June 12, 2012, possession of the unit was taken and the locks were changed.

The Tenant states that due to the increasing problems with the Landlord, the Tenant was concerned that the Landlord or Landlord would enter his unit without permission. The Tenant states that as a result of his concerns he moved out his most valuable possessions from the unit but did not abandon the unit. The Tenant states that following the Landlord taking possession of the unit, he was given one hour to remove his belongings from the unit but that several items were missing. The Tenant states that the food in his fridge and freezer was spoilt and estimated the value of this food at

approximately \$300.00. The Tenant also states that a medication that was to be kept refrigerated also became unusable and that while his insurance paid for most of this medication, he paid \$312.00 out of his pocket for this medication. The Tenant states that items such as a computer, dolly, and stamp collection were missing. The Tenant states that after speaking with a police staff sergeant he was encouraged to regain possession of the unit and that police are continuing to investigate on two files.

The Tenant claims an Order of Possession, the restoration of his services and utilities, return of his missing items and compensation for loss of the unit, loss of quiet enjoyment and loss of food and medication. The Tenant claims only the conditions as contained in the Act in relation to providing required notice for entry be set on the Landlord's right to enter the unit and claims an order allowing him to change the locks to the unit, with no key to be provided to the Landlord. The Tenant claims a monetary amount of \$4,800.00 and states that he only seeks reasonable compensation. The Tenant states that he has been staying in his car and on a friend's couch since the Landlord locked him out.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the lack of evidence to support the Landlord's statements of the Tenant's conduct, and considering the Tenant's denial of the statements, I find that the Landlord has failed, on a balance of probabilities, to substantiate cause. Accordingly, I find the Cause Notice to be invalid and the Tenant is entitled to a cancellation of the Cause Notice.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. Noting that the Tenant filed an

application on June 8, 2012 to dispute the Notice and accepting the undisputed evidence of the Landlord that the Notice was served on Saturday June 2, 2012, I find that the Tenant filed his application within the time required. Given the Landlord's evidence of the Tenant's practice in paying rent, I find that this practice was approved by the Landlord and considering the evidence of the bank draft for June 2012 rent, I find that the Landlord has not substantiated that the Tenant failed to pay rent for June 2012 and that the Notice is therefore not valid. As such, I find that the Tenant is entitled to a cancellation of the Notice.

Section 27 of the Act provides that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the unit as living accommodation. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including exclusive possession of the rental unit subject only to the landlord's right to enter the unit as set out in Section 29 of the Act. Section 29 of the Act provides as follows:

- (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).

The relevant portions of Section 26 of the Act provide as follows:

(3) Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) Subsection (3) (a) does not apply if

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

Section 24 of the Residential Tenancy Regulation provides as follows in relation to abandonment:

(1) A landlord may consider that a tenant has abandoned personal property if

(a) the tenant leaves the personal property on residential property that he or she has vacated after the tenancy agreement has ended, or

(b) subject to subsection (2), the tenant leaves the personal property on residential property

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

(ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the residential property, or

(b) the circumstances surrounding the giving up of the rental unit are such that the tenant could not reasonably be expected to return to the residential property.

Given the date of the Tenant's application to dispute the Notices to End Tenancy and accepting the Landlord's evidence that he spoke with the Residential Tenancy Branch about the circumstances following this date, I find that the Landlord should reasonably have known that the Tenant was disputing the end of the tenancy. I find it highly unlikely that the RTB would have informed that Landlord, in the face of such an application, that the Landlord was entitled to take possession of the unit. Considering also the Landlord's evidence that not all items were gone, I find overall that the Landlord was not entitled to consider the circumstances found on June 12, 2012 to be a reasonable expectation that the Tenant would not return to the property.

As the Landlord entered the unit without right and acted to take possession of the unit and to restrict the Tenant from his personal property without entitlement, I find that the Tenant has substantiated a right to possess the unit and is therefore entitled to an Order of Possession, effective immediately. As the tenancy is continuing, I dismiss the Tenant's claim for return of the security deposit with leave to reapply.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given the above findings that the Landlord took possession of the Tenant's unit without lawful right, I find that the Tenant has substantiated a loss of quiet enjoyment and possession of the unit through the breach of the Landlord. I also find that the Tenant is entitled to a monetary award that reflects the impact of the Landlord's actions on the Tenant's living conditions since being locked out of the unit and that the Tenant is therefore entitled to reasonable compensation of **\$1,800.00**.

Although the Landlord has denied terminating the Tenant's utilities, cable and laundry, I find the Tenant's evidence to be sufficiently persuasive to find on a balance of probabilities that the Tenant was without these services or facilities for the period June 1 to 12, 2012 as a result of acts by the Landlord. As the Landlord did not dispute the Tenant's evidence of being provided these services or facilities from the onset of the tenancy and as I find that utilities are essential to the Tenant's use of the unit, I find that

the Tenant has substantiated an entitlement to compensate for the loss of utilities in the amount of **\$100.00 and an additional \$50.00** for the loss of laundry and cable. Further, should the Landlord fail to restore these services and facilities to the unit, I order the Tenant to reduce rent by the amount of **\$150.00** for each month or part thereof that these services and facilities are not restored. Given the finding that the Landlord terminated the utilities, it is reasonable to find that food in the fridge would spoil upon this termination however as the amount of food loss was indeterminate, I find that the Tenant is only entitled to nominal compensation of **\$100.00**. Given the lack of corroborating evidence in relation to the loss of other items from the unit, including the medicine, I dismiss this part of the Tenant's claim.

Given the finding that the Landlord entered the Tenant's unit and took possession of the unit without right, I find that the Tenant has substantiated a high level of concern in relation to the Landlord's access to the unit and I therefore find that the Tenant is entitled to an order allowing the Tenant to replace the locks on the unit. I also find that the Tenant is also entitled to an order that the Landlord comply with section 27 of the Act as set out above.

The Tenant's monetary entitlement totals \$2,050.00. I also find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$2,100.00**. I provide a monetary order for this amount however should the Tenant choose, this amount may be set off against future rent owing.

### Conclusion

The Notices to End Tenancy for Unpaid Rent and Cause are cancelled.

**I Grant** an Order of Possession to the Tenant effective immediately.

**I Order** that the Tenant is allowed to change the locks to the unit.

**I Order** the Landlord to comply with the notice requirements as contained in Section 27 for entry into the unit.

**I Order** the Landlord to immediately restore utilities, cable and laundry access to the Tenant.

**I Grant** the Tenant a monetary order under Section 67 of the Act for **\$2,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 3, 2012.

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Residential Tenancy Branch