



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC RP MNDC FF

### Introduction

This hearing was convened in response to a subsequently *amended* application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. Cancel a 1 Month Notice to End for Cause issued by the landlord June 27, 2012 - Section 47;
2. Make repairs to the unit - Section 62;
3. A Monetary Order for damage or loss under the Act, regulation or tenancy agreement – Section 67
4. An Order to recover the filing fee for this application - Section 72.

Both parties appeared, gave affirmed / sworn testimony 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.

As preliminary, it is my decision that I will not deal with all the dispute issues that the tenant has placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue to be dealt with together. Therefore, I will deal with the tenant's request to set aside, or cancel the landlord's 1 Month Notice to End Tenancy for Cause, and I **dismiss** the balance of the tenant's monetary claim with liberty to re-apply.

At the outset the landlord requested an Order of Possession. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for stated and sufficient reasons.

### Issue(s) to be Decided

Is the notice to end tenancy valid and issued for valid reasons?

Should the Notice to End dated June 27, 2012 be set aside?  
Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The following is undisputed. This tenancy began January 15, 2012. At the outset a security deposit of \$600.00 was collected by the landlord, with the tenancy agreement noting that a pet damage deposit not applicable. Rent is payable on the 1<sup>st</sup>. of each month. The rental unit consists of a basement suite, which has a separate suite above the rental unit that has been and remains vacant. It must be noted that the thermostat for the house is situated in the vacant suite above the rental unit.

The parties submitted a copy of the Notice to End. The notice to end was issued for the following reasons;

- Tenant or person permitted on the property by the tenant has: put the landlord's property at significant risk*
- Tenant has engaged in illegal activity that has or is likely to damage the landlord's property.*
- Tenant has not done required repairs of damage to the unit*
- Pet damage deposit was not paid within 30 days as required by the tenancy agreement*

The tenant disputes the Notice to End.

The landlord testified that they have concerns about the safety of their house given that on inspecting the vacant suite above the tenant, they have discovered some cigarette butts, and a makeshift ashtray in the suite and several empty containers of wine / cooler and beer. The landlord provided photographs of these items, and also provided a photograph of an abundance of envelopes of mail, flyers and other publications in the suite above the rental unit. The tenant claims he goes into the above suite only periodically to check on it and remove any mail in the suite and does not drink alcohol in the unit. The tenant testified that they may go upstairs with a lit cigarette but are not careless with the cigarette and have never left any evidence of smoking in the unit.

The landlord did not adequately articulate the nature of the *illegal activity* in respect to their claim that it has or is likely to damage the landlord's property.

The landlord claims the tenant broke the door dividing the basement and upper unit and has not fixed it. The parties argued if the landlord gave the tenant permission to remove

the door so as to access the thermostat upstairs – in which process the tenant broke the door. None the less, the tenant claims they had provided photographs of the subject door as now repaired, albeit a month after it was reportedly broken. The landlord accepted the tenant's evidence as proof the door has now been repaired.

The landlord claims that at the outset of the tenancy the tenant stated they did not have a pet, so they checked the box: *Not applicable*. The tenant states they told the landlord they had a cat, but determined that the landlord did not require nor needed a pet damage deposit, therefore checking the box.

### **Analysis**

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was issued for the stated reasons and that the reasons are valid and sufficient to end the tenancy. On preponderance of the evidence I find the landlord has not sufficiently proven the tenant has placed the landlord's property at *significant* risk. I find it is available to the landlord to restrict access to the suite above the tenant.

The tenant denies allegations of illegal activity and the landlord did not well articulate the nature of this basis to end the tenancy.

I find that the previously damaged door has now been repaired, and that the landlord accepts this fact.

I find that in the absence of proof as to what information was exchanged at the outset of the tenancy, the landlord must take ultimate responsibility for what is placed in the tenancy agreement as the tenancy agreement is an instrument of the landlord. As a result, I accept that the landlord determined that a pet damage deposit was not applicable.

As a result of all the above, I find the landlord has not met their burden in this matter. I find that the landlord has not provided *sufficient* compelling evidence that the Notice to End was issued for the reasons stated in the notice to end, and as a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, I **Order** the Notice to End dated June 27, 2012 **is cancelled**, or set aside. If necessary, the landlord is at liberty to issue another new Notice to End for *valid* reasons.

As the tenant was successful, in part, in their application, the tenant is entitled to recover their filing fee.

**Conclusion**

The tenant's application, in part, is granted. **I Order** the landlord's Notice to End is **set aside and is of no effect**. The tenancy continues.

**I Order** that the tenant may deduct **\$50** from a future rent in satisfaction of their filing fee.

The balance of the tenant's application is **dismissed** with leave to reapply.

This Decision is final and binding on the parties.

*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 23, 2012

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