



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

CNC MNR MNDC OLC LRE DRI FF

### Introduction

This hearing was convened in response to an 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 - Section 47;
2. A Monetary Order for the cost of emergency repairs - Section 67;
3. A Monetary Order for damage or loss – Section 67
4. For the landlord to comply with the Act – Section 62
5. To suspend or set conditions on the landlord's right to enter the rental unit – Section 70
6. Dispute an additional rent increase – Section 43
7. 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.

The landlord has been in another province for the past 2 weeks and did not receive the tenant's evidence package sent to them at their home by registered mail on July 05, 2012, but elected to continue in the hearing.

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 the application to suspend or set conditions on the landlord's right to enter the rental unit, 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 15, 2012 be set aside?  
Is the landlord entitled to an Order of Possession?

### **Background and Evidence**

The following is undisputed. This tenancy began June 15, 2008. At the outset a security deposit of \$900.00 was collected by the landlord. Rent is payable on the 1<sup>st</sup>. of each month. The rental unit consists of 5 bedrooms, but the parties have a verbal agreement that one bedroom (landlord's bedroom) is for the sole use of the landlord, primarily for storage of their belongings, and that the landlord can access that bedroom by notifying the tenant by telephone and accessing the bedroom via the rental unit when the tenant is home. The tenant couple resides in the rental unit and provide room and board (meals) for 6 international students in the rental unit.

The tenant submitted a copy of the Notice to End. The landlord did not advance or provide any document evidence to this matter. The notice to end was issued for the following reasons;

- *Tenant has allowed an unreasonable number of occupants in the unit*
- *Tenant has assigned or sublet the rental unit without landlord's written consent*

The tenant disputes the Notice to End – testifying that the landlord knew at the outset of the tenancy agreement in 2008 that they have international students. The tenant testified and provided evidence that the landlord responded favourably / in favour to the tenant's advertisement for a house or large suite of 4 bedrooms and which advertisement also described that they had 3 international students at that time. Subsequently, the parties signed a tenancy agreement which provided for bi-weekly payments of rent and that the tenant would be responsible for all utilities.

The landlord testified that they have concerns about the safety of their house given the number of occupants and that the living room is being used as a bedroom at this time, and that they have not provided the tenant permission to do this.

The tenant also testified the boyfriend of the landlord once accessed the *landlord's bedroom* in the absence of the landlord causing the tenant concern respecting their privacy. The landlord claims that they abided by their agreement to notify the tenant and that the tenant knew the landlord's bedroom would be accessed. Both parties confirmed that the agreement between them is:

- *The landlord will phone the tenant before accessing the landlord's bedroom.*
- *The landlord will only come to the rental unit when the tenant is home.*

However, the parties agree that their friendship relationship has, in the past, permitted their agreement respecting the landlord's bedroom to lose formality and strict adherence to the agreement.

### **Analysis**

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. On preponderance of the evidence I find the tenant still resides in the rental unit and has not sublet the rental unit or assigned their legal responsibility to the unit. I find the landlord has known for 4 years that the tenant accommodates a quantum of international students. I find that the rental unit is sufficiently large to accommodate the number of occupants in the rental unit. I also find that the landlord does not pay for utilities – which would otherwise place a financial burden on the landlord. The landlord has also not proven that safety issues exist within the rental unit as a result of the number of occupants in the rental unit, or that the current number of occupants places a financial burden on the landlord.

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 validly 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. It must be noted that my findings are limited to the current conditions within the rental unit and do not apply in the event the number of occupants increase. It must further be noted that when the tenancy ends it may be appropriate for the landlord to file an application for compensation if the landlord can prove that due to the number of occupants in the unit the unit has experienced wear and tear which is beyond *reasonable*, or is excessive.

Therefore, as a result of all the above, **I Order** the Notice to End dated June 15, 2012 **is cancelled**, or set aside. If necessary, the landlord is at liberty to issue another new valid Notice to End for *valid* reasons.

I further find that the parties have an unconventional, yet agreed arrangement in respect to the landlord's access to the *landlord's bedroom* and I find the parties arrived at this arrangement by choice. I find the parties are able, and are agreeable, to conform more strictly to their agreement respecting the landlord's bedroom and plan to do so. As a result, I find it is not necessary at this time for me to suspend or set conditions on the landlord's right to enter. **I dismiss** this portion of the tenant's claim, with, *if necessary*, leave to reapply.

As the tenant was, in part, successful 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.

The landlord's right under the Act to enter the rental unit remains guided by the Act – although the parties are at liberty to mutually agree to an alternate arrangement.

**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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Residential Tenancy Branch