



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant    CNR, MNDC, LRE, LAT, RR, FF, O  
                                 Landlord   OPR, OPC, MNR, FF

### Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession, a monetary order for unpaid rent and to recover the filing fee for this proceeding.

The Tenants filed to obtain an order to cancel the Notices to End Tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement, to set conditions on the Landlord's right of entry, to change the locks on the rental unit, to allow the Tenant a rent reduction, to recover the filing fee and for other considerations.

Service of the hearing documents by the Landlord to the Tenant were done by registered mail on August 3, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by registered mail on July 20, 2012 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

At the start of the Hearing the Dispute Resolution Officer informed the Parties that the hearing will deal with the Landlord's application to end the tenancy, the Landlord's monetary claim for unpaid rent and the Tenant's application to contest the Notices to End Tenancy. The Tenants applications for compensation for damage or loss under the Act, regulations or tenancy agreement, to set conditions of the Landlords right of entry, to change the locks, to allow the Tenant a rent reduction and other considerations are separate and unrelated dispute to this application. In section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) a Dispute Resolution Officer may dismiss unrelated disputes within an application. The Tenant's applications for compensation for damage or loss under the Act, regulations or tenancy agreement, to set conditions of the Landlords right of entry, to change the locks, to allow the Tenant a rent reduction and other considerations are dismissed with leave to reapply.

## Issues to be Decided

### Landlord:

1. Is the Landlord entitled to end the tenancy?
2. Is there unpaid rent and if so how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

### Tenant:

1. Is the Tenant entitled to an order to cancel the Notices to End Tenancy?

## Background and Evidence

This tenancy started on October 1, 2011 as a month to month tenancy. Rent is \$1,700.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$850.00 in September, 2011.

The Landlord said that the Tenant did not pay rent of \$1,400.00 for the month July, 2012, when it was due and as a result, on July 17, 2012, he personally delivered a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 17, 2012 to the Tenant. Further the Landlord said that he and the Tenant agreed to a rent reduction from \$1,700.00 to \$1,400.00 for July and August, 2012 on humanitarian grounds as the Tenant's partner left the Tenant and the Tenant told the Landlord she was in financial difficulties. The July, 2012 rent was paid on July 19, 2012 which is within the 5 days allotted on the 10 Day Notice to End Tenancy dated July 17, 2012. The Landlord continued to say that he believes the Tenant was not in financial difficulties and that she is in contact with her partner so he has applied for the unpaid rent on the full amount of rent \$1,700.00. The Landlord said he is rescinding his offer for the reduced rent from \$1,700.00 to \$1,400.00 for July and August, 2012. As well the Landlord said the Tenant has not paid the August, 2012 rent. As a result the Landlord is requesting \$300.00 of unpaid rent for July, 2012 and \$1,700.00 of unpaid rent for August, 2012.

The Landlord continued to say that he also issued a 1 Month Notice to End Tenancy for Cause to the Tenant dated July 23, 2012, because the Tenant has unreasonably disturbed the Landlord and other occupants, the Tenant has put the Landlord's property at significant risk, the Tenant has seriously jeopardized the health or safety of the Landlord or other occupants and the Tenant has broken material terms of the tenancy agreement. The Landlord requested an Order of Possession if his application is successful.

The Landlord continued to say the Tenant has unreasonably disturbed his Manager B.S. by shouting at him and calling him derogatory names. The Manager B.S. said the Tenant has called him homophobic names and he is afraid to deal with the Tenant. The Manager B.S. said the Tenant has only verbally abused him, but he feeling it could become a physical attack in the future. The Landlord said an incident with the Tenant on July 16, 2012 lead to the Police responding to the rental unit to calm the Tenant down. The Landlord said they were responding to a leak reported in the roof when they discover the Tenant has construction material blocking the hallway. The Landlord said the Tenant got aggressive when they asked her to move the materials in the hallway and they called the Police to deal with the Tenant. The Landlord submitted into evidence a request for the police file, but no police file was submitted at the time of the hearing.

In addition the Landlord also provided 3 complaint letters from another occupant of the building as evidence that the Tenant has disturbed other residents in the building. These letters of complaint were noise related complaints. The Landlord said he sent the Tenant two warning letters regarding these noise complaints.

The last incident that the Landlord described put the Landlord's property at risk and jeopardized the safety of other tenants when the Tenant did not report a stranger, who was in her unit. The Landlord said the Tenant should have reported this to the Police immediately as it could have put the Tenant and other occupants of the rental complex at risk. The Landlord said it is the Tenant responsibility help protect the rental complex when a threat is present. The Landlord said the Tenant did not do this therefore she was putting the building at risk.

The Tenant said she made an agreement for a reduced rent of \$1,400.00 for July and August, 2012. She said the Landlord said he agreed that he made this agreement so the rent is \$1,400.00 for those two months. The Tenant continued to say that she paid the July, 2012 on July 19, 2012 which is within the 5 days indicated on the 10 Day Notice to End Tenancy; therefore the rent for July, 2012 was paid and the 10 Day Notice to End Tenancy dated July 17, 2012 is satisfied. The Tenant also agreed that she has not paid the August, 2012 rent which she said is \$1,400.00 not \$1,700.00 because of the agreement with the Landlord.

The Tenant continued to say that the noise complaints by the other occupant are partially because of construction in the building and that one of the complaints was made about her when she was not in the building.

With respect to the Landlord and Manger's allegations of her calling the Manager homophobic names the Tenant said that is untrue. The Tenant did agree that she has yelled at the Manager and they do not have a good relationship. The Tenant said she

has asked the Landlord if she can pay the rent directly to him and not to deal with the Manager.

The Tenant continued to say she submitted 125 pages of evidence late for the hearing which explains all her claims and the situation in this tenancy. The Tenant said she believe the Landlord wants to evict her so that he can complete the renovations in the unit and building and then rent the unit out at a higher rent.

The Tenant continued to say the night that she was asked to move her construct material out of the hallway, she did so immediately and she also got a friend to help her move the heavy items. The Tenant said she was not mentally well that night and she was emotional distraught, but she said the Landlord is overstating what happened. The tenant said she complied with the Landlord's request to have the hallway clear. The Landlord agreed that the hallway was cleared that night with the presents of the Police.

The Tenant said that with regard to the incident of the stranger in her unit it turned out to be another tenant in the building that had entered her unit from the fire escape as she had left her patio door open or unlocked. The Tenant said the other tenant was watching the Canada Day fireworks from the fire escape and then entered her unit. The Tenant said the incident resolved itself in her mind. The Landlord said this was the first time he had heard that it was not a stranger. As well, the Landlord said they had canvassed the complete rental complex about the incident and no one had said anything about the other tenant being the stranger.

## Analysis

With regard to the 10 Day Notice to End Tenancy for unpaid rent for July, 2012. Both the Landlord and the Tenant agree an arrangement was made to reduce the rent from \$1,700.00 to \$1,400.00 for July and August, 2012. The Landlord did this on humanitarian grounds to help the Tenant's financial situation. Although the Landlord said he has heard that the Tenant's financial situation may have been misrepresented and as a result the Landlord has rescinded his agreement to the arrangement, I find that the Landlord has no corroborating proof that the agreement was misrepresented; therefore I find that the rent reduction for July and August, 2012 reducing the rent from \$1,700.00 to \$1,400.00 stands. Consequently as the Tenant paid the full \$1,400.00 within the time limits of the 10 Day Notice to End Tenancy dated July 17, 2012; I find the July rent has been paid in full and the 10 Day Notice to End Tenancy dated July 17, 2012 is cancelled.

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord and the Landlord's Manager B.S. The Landlord has indicated that the Tenant has verbally abused the Landlord's manager B.S. with name calling and aggressive behaviour. There is no evidence that a warning letter or similar deterrent action has been taken to advise the Tenant to stop this behaviour. In situation where there is ongoing unacceptable behaviour that is serious but does not meet the level of seriousness required by section 47 of the Act a written warning is required to support the claim for cause for an eviction. Consequently, Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has **seriously** jeopardized the health or safety or lawful right or interest of the landlord or another occupant, or put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date July 23, 2012 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

With respect to the Landlord's other claims of cause for the eviction. The noise complaints from another tenant were supported by letters, but the Tenant gave another possible explanation which was that other construction noise in the building. The stranger incident in the Tenant's unit which the Tenant said was another tenant in the building and was resolved. The Police incident resulting from the blocked hallway is a serious situation, but as there were no charges resulting from the incident it is questionable how serious the incident was. In these situations the burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. I find the Landlord has not established ground to be successful in obtaining an Order of Possession therefore I dismiss the Landlord's application.

In addition I will note that both parties inquired about further applications and I want to indicate this decision does not inhibit the Landlord from issuing a 10 Day Notice to End Tenancy for unpaid rent for August, 2012. As well the Tenant indicated she may make an application for monetary compensation and the other items that were not heard in this application. This decision does not impede those applications if the Tenant chooses to make them.



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As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the August or September, 2012 rent. The August or September, 2012 rent is adjusted to \$1,350.00.

## Conclusion

I order the 10 Day Notice to End Tenancy for unpaid rent dated July 17, 2012 and the 1 Month Notice to End Tenancy for Cause dated July 23, 2012 are cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The Landlord's application is dismissed without leave to reapply and the Landlord is ordered to bear the cost of filing fee of \$50.00 for the application which he has already paid.

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*.

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Residential Tenancy Branch