



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT CNC AAT RR O FF

### Preliminary Issues

Upon review of the items being sought in the Tenant's application for dispute resolution both parties confirmed that a 1 Month Notice to end tenancy was issued March 1, 2012 after which the two parties agreed to withdraw and reinstate the tenancy. No additional 1 Month Notices have been issued since; however, there was a mutual agreement to end tenancy signed which the Tenant is seeking to have cancelled or set aside in this proceeding.

Based on the aforementioned, I hereby amend the Tenant's application to remove his request for more time to dispute a notice and to withdraw his request to set aside or cancel a notice to end tenancy for cause, in accordance with section 64 (3)(c) of the *Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to allow access to (or from) the unit or site for the Tenant or the Tenant's guests, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided, and for other reasons to cancel a mutual agreement to end tenancy.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the Tenant and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, and respond to each other's testimony. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the mutual agreement to end tenancy be cancelled?
2. Have the Tenant and his guests been denied access to (or from) the unit, or site?
3. Should the Tenant be allowed to reduce his rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The parties entered into a tenancy agreement for this unit which began on August 1, 2008. Rent is subsidized and is currently payable on the first of each month in the amount of \$375.00. The Tenant paid \$238.50 on August 1, 2008 as the security deposit which was based on market value rent.

The Tenant submitted 44 pages of evidence which included, among other things, copies and photos of: his advocate's written statement; notices which were posted around the rental complex stating the Tenant is not accepting visitors or guests; medical documentation; photos of the condition of the ceiling in the rental unit; and a mutual agreement to end tenancy that was signed on August 3, 2012.

The Tenant argued that during a meeting with his Landlord he was coerced into signing the mutual agreement to end tenancy, a document which he alleged he did not fully understand. He submitted that he was of the impression he was agreeing to manage his visitors so they did not disturb other tenants. Shortly after the meeting he began to see notices posted around the rental building stating he was not accepting visitors which sparked him to take the agreement he had signed to an advocate for review and an explanation. Once he realized that the agreement meant he would have to move he made application for dispute resolution to have this agreement cancelled.

The Landlord confirmed she arranged a meeting with the Tenant to discuss how his visitors have been disturbing other tenants. During the meeting she said they agreed to work with the Tenant to try and preserve his tenancy. She acknowledged that she had him sign the mutual agreement to end tenancy effective August 31, 2012 and that she told him she would only use the document if the Tenant was not able to control his visitors.

The Landlord admitted to posting the signs around the rental unit which state the Tenant is not accepting visitors and argued that the Tenant had agreed to this during their meeting. She stated the rental unit has 35 bachelor units which are each approximately 420 sq feet, a secured front door with intercom system and the Tenant's unit is located

on the top floor. The Landlord stated that the Tenant allows guests to come into the building at all hours of the day and night and that these guests disturb other tenants en-route to the Tenant's top floor unit. She has tried on several occasions, without success, to have the Tenant stop having so many guests or to have him attend the door and escort them back to his unit so they do not disturb other occupants.

The Landlord was not able to provide testimony of exact dates of recent disturbances; however she did note that a 1 Month notice to end tenancy for cause was previously issued to the Tenant on March 1, 2012. She confirmed that the parties met and agreed to withdraw the 1 Month Notice and the tenancy was re-instated. The Landlord stated that the Tenant was able to manage his guests for a short period and in the recent months things have been getting out of hand and the Landlord is getting numerous complaints from other tenants. The Landlord confirmed that there have been no written warnings issued to the Tenant and she thought the best way to handle the situation was to get the Tenant to agree to end his tenancy and sign the mutual agreement.

The Tenant acknowledged that his guests come at all hours of the day and night and argued that he is disabled and needs his guests around to assist him after his caregivers leave. He argued that no one informed him of complaints being made about his guests therefore he was not aware the situation needed to be corrected. He confirmed that he now understood how his guests were bothering other tenants and that he would speak with his guests about the problem. He also confirmed that he was now aware that the Landlord could issue him a notice to end his tenancy if the problems with his guests continued.

In addition to his request to cancel the mutual agreement the Tenant has sought an order to allow him reduced rent for repairs, services, or facilities agreed upon but not provided because there has been a roof water leak problem in his apartment for the entire four years of his tenancy. He referenced his photos which display the ceiling in his unit with the light fixture dangling by the electrical wires, a hole cut into the ceiling and an area that had been patched but not stippled or painted. He confirmed he has not informed the Landlord of his requests to have the repairs completed.

The Landlord confirmed that there has been a water leak issue in this building for several years which they have been working on getting fixed. She submitted that despite numerous roof repairs over the recent years there continues to be a leak during excessive periods of rain so they have not been able to close the hole in the Tenant's ceiling or finish the repairs as they need access to assist in determining where the water is leaking from. In recent months they have brought in various engineers and contractors to diagnose the problem and provide reports on how to conduct the repairs.

She stated that the latest report was that the work would be moving forward in the spring of next year.

The Tenant confirmed that there were engineers and other contractors coming into his unit recently to look at the problem. He was concerned that the repairs be conducted as soon as possible because he has had to live with his ceiling being cut open for years.

In closing the Landlord argued that the ceiling looked the same prior to the Tenant moving into this unit. She said she tried to convince the unit to move into a different unit after she told him about the water leak issue but he still insisted he wanted to move into that unit because he liked the views.

### Analysis

I have carefully considered the aforementioned, the documentary evidence provided by the Tenant, and on a balance of probabilities I find as follows:

I find the Tenant's version of events that he did not clearly understand he was signing an agreement that would end his tenancy August 31, 2012 to be probable given the circumstances presented to me during the hearing. I make this finding in part because the Landlord admitted that she had told the Tenant that she would work with him to control his guests so he could continue to live there. This arrangement provided an unfair advantage to the Landlord whereby she would have the ability to enforce the end of the tenancy even if the Tenant was able to manage his guests, an arrangement the Tenant did not clearly understand at time the agreement was signed. A mutual agreement to end tenancy is an agreement whereby both parties agree to end their relationship and is not intended to be used as a conditional agreement giving one party an unfair advantage. Therefore, I hereby cancel the mutual agreement to end tenancy signed August 3, 2012, in accordance with section 62 of the Act.

Section 30 of the Act stipulates that a landlord must not unreasonably restrict access to the residential property to a tenant or a person permitted on the residential property by the tenant.

In this case the evidence supports the Landlord has breached section 30 of the Act by posting notices indicating the Tenant was not accepting guests. Accordingly, I Order the Landlord to comply with the Act and allow the Tenant and guests access to the unit.

Section 32 of the Act provides that a landlord must 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 to the age, character and location of the rental unit makes it suitable for occupation.

I accept the Landlord's evidence that the water leakage problem is very complex and has been under investigation for several years. I further accept that the work is ongoing and the major roof work should be undertaken in the spring of 2013. Although the current condition of the Tenant's ceiling may be unpleasant to look at, there is insufficient evidence to support it is in breach of section 32 of the Act. That being said, this is the first time the Landlord was informed that the Tenant would like the repairs to be completed. Therefore, I find there to be insufficient evidence to warrant a rent reduction as there was no previous arrangement to have the ceiling repairs completed by a specific date. That being said, I find the current condition of the light fixture which is dangling by the wires, to be unacceptable and I hereby order the Landlord to have the light fixture properly attached to the ceiling.

### Conclusion

The mutual agreement to end tenancy signed August 3, 2012, is HEREBY CANCELLED and is of no force or effect.

The Landlord is HEREBY ORDERED to comply with the Act and not restrict the Tenant or guests access to the rental unit.

The Tenant understands that if his guests disturb other occupants, and it is verified by the Landlord in the future, this decision and the written record of these events would form part of the Landlord's case should it again come before a dispute resolution officer for consideration.

The Landlord is HEREBY ORDERED to have the light fixture in the Tenant's rental unit properly attached to the ceiling, no later than **September 24, 2012**.

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: September 13, 2012.

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Residential Tenancy Branch