



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, LRE

### Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order suspending or setting conditions on the landlord's right to enter the rental unit.

The named landlord attended the conference call hearing and attended as agent on behalf of the named landlord company. The tenant also attended and was assisted by an advocate. The parties provided evidentiary material in advance of the hearing and each gave affirmed testimony. The parties were also given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service were identified.

During the course of the hearing, the tenant withdrew the applications for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order suspending or setting conditions on the landlord's right to enter the rental unit.

### Issue(s) to be Decided

The issue remaining to be decided is:

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

### Background and Evidence

The parties agree that this month-to-month tenancy began on July 1, 2012 and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On June 30, 2012 the landlord collected a security deposit from the tenant in the amount of \$375.00 which is still held in trust by the landlord.

The landlord testified that the rental unit is in need of repairs and the building has sustained significant water damage but the tenant has not allowed contractors to enter the rental unit to effect those repairs. There were no issues between the parties for the inspection, but before the tenant would allow the repairs to happen, the tenant wanted the landlord to move the tenant out of the rental unit at the landlord's expense and pay the tenant a rebate on the rent. The landlord was not willing to do so and told the tenant that the rental unit could still be lived in while the repairs took place but if the tenant wanted to move out temporarily, the landlord would return the unused portion of the rent to the tenant. The landlord had no intentions of requiring the tenant to move out. A portion of the hardwood in the entry and some of the drywall and wall tiles in the bathroom need to be removed. The landlord fears continued rotting and mould, and the tenant had mentioned a concern about a health issue. The tenant needs to allow the repairs to take place in the rental unit to ensure there are no health issues. The contractors attended on or about July 23, 2012 but were denied access by the tenant so the landlord put it in writing on August 13 or 14, 2012 upon returning from a vacation.

The landlord provided copies of letters given to the tenant. The first letter is dated August 12, 2012 and states that contractors need access for demolition and repair and would contact the tenant directly with details on access.

The second letter is dated August 13, 2012 which confirms that the tenant consented to contractors entering the rental unit on August 14, 2012 between 8:30 am and 9:30 am for the purpose of re-evaluating the scope of work required due to a damaged water line. The letter also states that the contractor would inform the tenant of what work was required and timeline, and that if the tenant disallowed entry after being given 24 hours notice, the landlord would proceed with eviction and pursue monetary damages if the delay caused more damages. The letter also states that if the tenant did not respond by August 14, 2012 the landlord would take that as acceptance by the tenant.

The next letter is dated August 14, 2012 which provides 24 hours notice for the contractor to enter the rental unit on August 16 and 17, 2012 from 8:30 am to 4:00 pm and August 20 – 24, 2012 from 8:30 am to 4:00 pm to perform repairs, and the repairs are detailed:

Removal Work, estimated to take 7 business days:

- Remove and dispose of all sub-floor to the entry and hallway leading to the washroom;
- Remove and dispose of the sub-floor complete to the bathroom, including walls then re-boarding and poly the walls to allow the tenant continued use of the tub during the course of repairs;

- Perform a 3 step bio-wash and install during equipment.

The letter further states that the contractor advised that the rental unit would still be livable during the repair period.

Another is undated and it offers the tenant a rebate of the rent for August, 2012 and advises that the tenant would be required to find alternate accommodation at the tenant's expense if the tenant chose to leave the rental unit during the removal work. Following removal, drywall, tiling and flooring would be replaced. The letter also states that if the tenant did not respond by August 16, 2012 the landlord would take that as acceptance by the tenant.

The landlord testified that the contractors are a restoration company appointed by the landlord's insurance company, and they don't yet know what's going on. The scope of damage in one rental unit is not the same as other rental units. Not all tenants have left their units, but one moved out because the entire bathroom in that unit was removed.

The landlord also provided a copy of a letter from the contracting company to the landlord dated September 11, 2012 wherein the contractor has assessed the scope of work and the work required needed was removing a portion of the hardwood floor near the main door and the walls in the bathroom around the shower, and that those areas were subject to water damage from a damaged water pipe in another unit. The removal work would take about 3 days, 3 to 4 days of drying, and then 5 days for repair. The letter confirms that the unit could still be lived in but that the tenant has refused the landlord to allow tradesperson to enter the unit to begin the restoration process.

The landlord issued a 1 Month Notice to End Tenancy for Cause on August 15, 2012 and provided a copy for this hearing. The notice is dated August 15, 2012 and contains an expected date of vacancy of September 15, 2012. The reasons for ending the tenancy are stated to be that:

- 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 or safety or lawful right of another occupant or the landlord;
  - Put the landlord's property at significant risk.

The landlord also testified that upon learning that a 1 Month Notice to End Tenancy must provide an effective date of vacancy of at least 1 month after the date the notice

was issued, the notice ought to legally end the tenancy on September 30, 2012. The landlord orally requested an Order of Possession.

The tenant testified that the landlord had left a text message for the tenant about who to contact while the landlord was on vacation. Contractors appeared to do the work and the tenant asked how long it would take. The contractor said that the tenant should have been told that it could take several days. He said it was an emergency thing and caused the tenant to believe that there might be mould or other things under the floor, and the tenant was concerned about chemicals mentioned by the contractor.

The tenant told the landlord what the contractor said, and the landlord had a different idea about what was liveable and told the tenant that it wasn't the landlord's responsibility to make another living arrangement for the tenant. Also, another tenant moved out of a unit during the repairs.

The contractors have tried to get into the rental unit every other day, and the tenant's 15 year old daughter was at home. The tenant did not want to leave the daughter at home alone with contractors and is concerned about chemicals and mould. The tenant's position is that the landlord was not mindful of the tenant's rights. From July 9 to August 14, 2012 the landlord didn't give the tenant notice to inspect the rental unit except on August 12, 2012. The contractor told the tenant that it was recommended to the landlord that the rental unit be vacant. It took the landlord 14 days to give notice. No information was given to the tenant until the contractor showed up to do the work. The landlord didn't need to end the tenancy, and that was an extreme step to take and not reasonable.

The tenant asks that the notice to end tenancy be cancelled.

### Analysis

The *Residential Tenancy Act* states that a landlord may end a tenancy for the reasons set out in the form and the approved form must be used. The effective date of the notice must be no less than one month after it is issued and must be the day before the date rent is payable under the tenancy agreement. The *Act* also states that incorrect effective dates in a notice to end tenancy are automatically changed to the nearest date that complies with the *Act*. A tenant must dispute the notice within 10 days of service or deemed service.

The parties agree that the tenant was personally served with a copy of the notice to end tenancy on August 15, 2012 and is in the approved form. The tenant disputed the

notice on August 21, 2012, and I find that the tenant has disputed the notice within the required time.

The landlord issued the notice to end tenancy with an effective date that does not comply with the *Act*, and therefore I find that the nearest date that complies with the *Act* is deemed to be September 30, 2012.

Having found that both parties have complied with the *Act*, the only issue remaining is whether or not the landlord has proven that the tenant:

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

The landlord provided evidence that repair to the water system and damaged floors and walls in the building are required due to a significant leak in another unit. The tenant was concerned about health issues once the removal work was done, and felt it was the landlord's responsibility to compensate the tenant for living expenses outside her home as a result and the tenant therefore felt justified in refusing entry to the rental unit. The landlord was only willing to provide the tenant with a rebate of rent which would not cover the living expenses. Neither party has provided me with any evidence of what health issues could arise, nor do I have any testimony or evidence of what the bio-chemical is that is intended to be used.

The landlord has a responsibility under the *Act* to maintain a rental unit so that it is inhabitable for a tenant. The landlord is also required to give not less than 24 hours notice in writing to enter the rental unit for a reasonable purpose unless the tenant consents at the time of the entry. I have no evidence before me that the landlord contravened that. It appears to me that the tenant consented to entry by the landlord and contractors until it was time to do the removal work.

With respect to the tenant's belief that the tenant had the right to refuse entry without the provision of living expenses from the landlord, I refer to the Residential Tenancy Branch Policy Guideline number 1 which states:

- If the tenant can purchase a reasonable substitute for the service or facility, a landlord may terminate or restrict a service or facility by giving 30 days' written notice, in the approved form, of the termination or restriction. The landlord must reduce the rent in an amount that is equivalent to the reduction in the value of the

tenancy agreement resulting from the termination or restriction of the service or facility.

In this case, the landlord offered the tenant a choice to leave the rental unit and the landlord would reimburse the tenant a proportional amount of rent, or stay while the repairs were completed.

I also refer to the *Act*, Section 62 (3):

The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

Although I am not satisfied that the tenant has unreasonably disturbed another occupant or the landlord, or that the landlord has proven that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord, I find it reasonable in the circumstances to agree that the tenant's actions have significantly interfered with the landlord, and may have put the landlord's property at significant risk, but neither party is certain and the landlord won't know until access is provided.

As a result, I find it reasonable in the circumstances to order the tenant to allow access by the landlord and the landlord's contractors to complete the work required in the terms set out by the landlord and the contractors, upon giving the tenant at least 24 hours written notice of the date and time. Without limiting the rights of the landlord, I also find it reasonable to grant an Order of Possession in favour of the landlord. If the tenant fails to allow entry to complete the repairs, the landlord will be at liberty to serve the Order of Possession and the tenancy will end after 2 days.

### Conclusion

For the reasons set out above, I hereby order the tenant to allow access by the landlord and the landlord's contractors to complete the work required in the terms set out by the landlord and the contractors, upon the landlord giving the tenant at least 24 hours written notice of the date and time of entry.

I further grant an Order of Possession in favour of the landlord on 2 days notice to the tenant. If the tenant fails to allow entry to complete the repairs, the landlord will be at liberty to serve the Order of Possession and the tenancy will end after 2 days.

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 28, 2012.

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Residential Tenancy Branch