



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, CNC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Months Notice to End Tenancy for cause and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

The tenant and three agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Preliminary Issues

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the tenant's application to cancel the Notice to End Tenancy for cause, and I dismiss the remaining claims with liberty to re-apply.

Issue(s) to be Decided

Is the tenant entitled to have the Notice to End Tenancy for cause cancelled?

Background and Evidence

The parties agree that this month to month tenancy started on March 01, 2010. Rent for this unit is \$632.00 per month and is due on the first day of each month.

The landlords resident manager (KO) testifies that the tenant was served with a One Month Notice to End Tenancy on July 24, 2012 this notice was posted to the tenants door and the reason given on the Notice is that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

KO testifies that the tenant was sent five separate letters concerning the cleanup of dog feces from the tenant's balcony. The letters were sent on March 29, 2011, February 27, 2012, March 28, 2012, May 31, 2012 and June 29, 2012. The KO agrees that each time they sent a letter the tenant complied and did clean up the dog feces however it kept recurring and on June 21, 2012 the landlords obtained a complaint letter from another tenant about the sight and smell of the dog feces on the tenants balcony. Within this complaint letter the complainant also informs the landlord that one of the tenant's dogs barks nonstop and urinates on the tenant's balcony.

The landlords maintenance man (SD) testifies that he was doing some work in the area off the tenant's balcony, caulking the windows, and noticed a great deal of dog feces on the tenants balcony. SD testifies that later he was working in the unit above the tenants and when he opened the windows the smell from the tenant's balcony was so bad he had to close the windows. SD states that the tenant has erected a bamboo screen around his balcony which tends to funnel the smell up towards the upper unit. SD testifies that the feces and urine drops over the edge of the tenant's balcony and this becomes worse if it rains. The tenants downstairs moved out because of this and complained verbally to the landlord before they moved out.

KO testifies that the tenant has changed the lock on the unit and has refused to give the landlord a key so the landlord can enter the unit if there is an emergency situation. The tenant broke the key of the original lock and did not bring this to the landlord's attention until July 2011. KO testifies that as the tenant has failed to ensure the balcony is kept clean and has not provided the landlord with a key to the new lock then the tenant has breached two material terms of the tenancy agreement.

The tenant testifies that he has not breached a material term of the tenancy agreement and the landlord has provided no evidence to support the reason given on the Notice as to which material term the tenant has breached. The tenant testifies that there is no term on his tenancy agreement about what he can use his balcony for and testifies that other tenants have dogs which they do not pick up after.

The tenant testifies that another tenant had an elderly dog which was allowed to roam free and defecate on the property both inside and out and the landlord did not deal with those concerns by evicting that tenant. The tenant proposes that the tenants who have complied in writing could have smelt the other dog's feces and heard the other dog barking.

The tenant testifies that he does clean up after his dog and states he cleans his balcony with bleach and water. The tenant testifies that he cannot smell feces from his balcony even three feet away and states his immediate neighbours have not complained to the tenant or the landlord. The tenant disputes the tenants above and below his unit moved out because of this or that they complained to the landlord. The tenant testifies that these tenants moved out for other reasons.

The tenant testifies that at the time the landlord served the tenant with the breach letters the matter was resolved. The tenant testifies that he is now aware that the presence of dog feces is more than a nuisance and he states he will become more diligent in future about ensuring he picks up after his dog each day. The tenant testifies that the matter was resolved before the landlord served the tenant with the One Month Notice and the tenant did not know that this was going to be an issue at the hearing today.

The tenant testifies that when he moved into this unit the landlord gave the tenant a silver key to the deadbolt. A few months later this key broke off in the lock. The tenant testifies that he called the residents managers number and the emergency number as he could not get into his unit. The tenant testifies that he slept at a friend's house that night. The next day he tried to contact the landlord again without success so he went next door and the neighbour's son went across the balconies and was able to let the tenant into his unit. The tenant testifies he had to carry out an emergency repair to change the lock and purchased a cheap lock to secure his unit until the landlord was able to replace the deadbolt lock. The tenant testifies that the resident manager just ignored the tenant's calls and it was not until July, 2012 that KO started to insist that the tenant provide KO with a key. The tenant testifies that he then put this in writing to KO and pointed out the section of the *Act* regarding emergency repairs. The tenant testifies that the landlord had a duty to repair his lock and was not entitled to a key for the tenants replacement lock until the landlord had made this repair.

The tenant requests that the One Month Notice is cancelled.

The landlord requests that the One Month Notice is upheld and seeks an Order of Possession.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has given a reason on the notice that the tenant has breached a material term of the tenancy agreement. The landlord has provided evidence concerning dog feces and urine and the tenant's refusal to provide the landlord with a key to the new lock. I will address the issue concerning the dog feces first. The Notice states that the tenant has not corrected this breach within a reasonable time after written notice was given. The tenant was given five separate notices concerning dog feces on his balcony spanning March 29, 2011 to June 21, 2012. The landlord did not however serve the tenant with the One Month Notice until July 24, 2012 just over a month since the last breach letter was sent. The tenant testifies that he complied with the breach letter and did clean up his balcony. Consequently, as I have no evidence to the contrary I find this section of the landlords claim now has no merit as the tenant did comply within a reasonable time after written notice to do so.

The tenant is however put on Notice today that he must ensure he complies with s. 32(2) of the *Act* which states:

A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

The tenant must ensure he cleans up after his dog each day in a manner that ensures sanitary conditions on his balcony. If the tenant fails to do so the landlord is entitled to serve the tenant with another One Month Notice to End Tenancy for cause.

With regard to the landlord's reason that the tenant has failed to give the landlord a key to the replacement lock I find both parties have breached the *Act* with regard to this matter. The landlord has failed to replace the broken lock in accordance with s. 32(1) of the *Act* as I find it likely that the tenant would have left messages for the landlord when the tenant found he was locked out of the rental unit and the landlord failed to respond to these. However I also find the tenant failed to provide the landlord with a key to the replacement lock in accordance with s. 31(3) of the *Act*. Therefore as the landlord breached the *Act* first the landlord is reasonably in this matter. Therefore I find the landlord has not provided sufficient

reason to end the tenancy as described on the One Month Notice to End Tenancy and consequently the Notice is cancelled and the tenancy will continue.

The landlord is also put on Notice that he must comply with s. 32 of the *Act* and replace the deadbolt lock to the tenants unit to ensure the tenants unit is secure. If the landlord fails to do so the tenant may seek a repair order against the landlord by filling another application for Dispute Resolution.

### Conclusion

The tenant's application is allowed. The one Month Notice to End Tenancy for Cause dated July 18, 2012 is cancelled and the tenancy will continue.

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: October 04, 2012.

---

Residential Tenancy Branch