



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, ERP, PSF, LAT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; orders to have the landlord complete emergency repairs; provide services and/or facilities required by law; to be allowed to change the locks on her rental unit and a monetary order.

The hearings were conducted via teleconference and were attended by the landlord's agent; the tenant and her advocate. The witness and translator attended the November 28, 2012 hearing only.

During the first hearing, the landlord verbally requested an order of possession should the tenant be unsuccessful in her Application to cancel the notice to end tenancy.

During the hearing on November 5, 2012, I attempted to call into the hearing the landlord's witness but due to a language barrier I was unable to do so. Despite the landlord having staff available who could provide translation the tenant and her advocate objected to those possible translators.

As a result and due to the length of the original hearing I adjourned the hearing to be reconvened on November 28, 2012. I ordered the parties to procure mutually agreeable translator services for the reconvened hearing. At the outset of the reconvened hearing the translator affirmed that she was an independent translator and was accepted by both parties.

During the first hearing the tenant provided direct testimony that provided an overabundance of detail that was not required for the matters raised in this dispute and despite my repeated requests to have the tenant focus her testimony and responses to the matters at end she was not able to do so.

As such I requested the tenant's advocate to present the tenant's position at the reconvened hearing and she did, except where there was a requirement for direct testimony from the tenant. Even, with my expectations clearly explained the tenant continued to provide superfluous testimony that unnecessarily lengthened the duration of the reconvened hearing.

As a result, despite having a list of witnesses that the tenant wanted to call into the hearing, I had to end the second hearing without calling the witnesses. I note that four of the five witnesses named had provided written statements for consideration.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to a monetary order for compensation for damage or loss resulting from the tenancy; to an order to have the landlord complete emergency repairs; provide services and facilities required by law; to allow the tenant to change locks on her rental unit, pursuant to Sections 28, 32, 33, 47, 67, and 72 of the *Residential Tenancy Act (Act)*.

If the tenant is unsuccessful in the portion of her Application seeking to cancel the 1 Month Notice to End Tenancy for Cause it must be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

### Background and Evidence

Both parties provided a copy of a tenancy agreement signed by the parties on January 5, 2002 for a tenant that began on January 1, 2002 citing the market monthly rent of \$620.00 with rent payable due on the 1<sup>st</sup> of each month. The landlord noted in the hearing that this unit is a subsidized unit.

The tenant provided into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on September 26, 2012 with an effective vacancy date of October 31, 2012 citing the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardize a lawful right or interest of the occupant or the landlord and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submits that as a result of the tenant throwing a plant and soil at a painter who was attempting to complete balcony painting on behalf of the landlord the tenant committed an illegal act that resulted in raising cause to end the tenancy as noted in the 1 Month Notice.

The parties agree the landlord had arranged for painting the balconies in the residential property. The tenant submits that there had been substantial miscommunication over the summer as to when the painting would occur and as a result she was forced to move her plants off and on the balcony several times to accommodate painting.

The tenant submits that on one occasion the painter got paint on many of her plants and as a result several plants died and so she was upset with the painters and on September 1, 2012 when the painter came and he would not discuss the paint on her

plants with her she became upset and through a small plant with some soil at the painter. She submits that it was a small plant and caused no injury to the painter.

The landlord's witness provided testimony regarding the events of September 1, 2012 at which time he was attempting to finish the painting work required on the tenant's balcony and that as a result of some previous painting work completed by another painter the tenant seemed upset to the witness. He went on to state that he was attempting to ignore her and complete his work but she got frustrated and threw a plant and soil at him. The witness found the events disturbing.

In his written statement, the witness states that he spoke with his supervisor who suggested he stop the painting until they have an opportunity to speak with the building manager on the following Tuesday.

There was no indication in the evidence or from testimony provided by either party that police were involved or that any charges were laid as result of these events. The landlord submits, however, that this was the illegal activity the tenant engaged in that resulted in adversely affecting the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardizing a lawful right or interest of the occupant or the landlord.

The landlord submits that as a result of these events the tenant breached clause 17 of the tenancy agreement that reads:

"The Tenant shall not cause or permit any noise, disturbance or interference which in the absolute discretion of the management is disturbing to the comfort, quiet enjoyment or safety of other Tenants in the premises or property at any time and particularly between the hours of 11:00 PM and 8:00 AM. The Tenant shall not do or permit anything to be done on the premises which is obnoxious, objectionable, illegal, noisy or offensive, not do anything or permit anything to be done which would become a nuisance or cause damage, interference or injury to the premises, the management, or any other Tenant or Resident. Breach of this term by any Resident(s) shall be cause for termination of this Tenancy Agreement"

The tenant submits, in her written statement, the landlord did not investigate the issue with the tenant or inform the tenant about this issue until the 1 Month Notice to End Tenancy was issued and that the landlord did not provide the tenant an opportunity to resolve the dispute in accordance with clause 33 of the tenancy agreement that states: "Disputes which cannot be settled to the satisfaction of either the Tenant's or the Landlord's representative shall be referred to the Society Board of Directors for a mediated settlement of restitution and reconciliation."

The tenant seeks to have the landlord comply with the Act, specifically outlined in her written submission the tenant seeks to have the landlord ensure the tenant obtains quiet enjoyment of her unit (Section 28); that the landlord provides and maintains the

residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law (Section 32); and that the tenant should not be coerced, threatened, intimidated, or harassed in order to deter her from making an application under the *Act* or in retaliation from seeking or obtaining a remedy under the *Act* (Section 95).

The tenant submits that the landlord has failed to comply with these obligations by permitting excessive smoke, noise, dust, dander, bird feather feces, to invade the tenant's unit despite numerous requests. Further the tenant submits the landlord allowed a contractor to destroy the tenant's plants.

The tenant has submitted a substantial volume of letters of support from friends and acquaintances who record that they believe that some of these issues have been ongoing for sometime beginning as early as 2007. The tenant has also submitted several letters from her health care professionals dating back to August 2012 that speak primarily to the tenant's issues with environmental noise. In one letter dated August 14, 2012 the tenant's physician identifies the tenant's issues dealing with second hand smoke.

I note also that both parties have provided copies of a large volume of communications between the tenant and the landlord dating back to June 2009. Much of the correspondence deals with the tenant's complaints regarding noise in her rental unit caused by other tenants and the landlord's responses. The landlord has also included a letter of complaint dated April 18, 2005 from another tenant that this tenant had been complaining to them about their child's noises between 9:00 a.m. and 12:00 p.m. daily and that she was watching them to ensure the mother wasn't doing something to cause the baby to cry.

In a letter dated June 22, 2009 the landlord states, in regard to a complaint lodged by the tenant at 1:00 p.m. on June 15, 2009 that the noise made by a child in a unit upstairs from the tenant: "repeated disturbances and complaints regarding this family, and your repeated use of our emergency phone for your personal grievances are and could lead to action against your tenancy."

The tenant also seeks compensation for suffering a lack of quiet enjoyment for years resulting from excessive smoke, noise, dust and dander invading her unit. The tenant submits specifically that the landlord has failed to enforce their own no smoking policy; that there is a motorcycle that causes noise disturbances leaving the parking area early each morning; and the painting of balconies took longer than originally told and the tenant had to move her plants repeatedly in and out of the rental unit throughout June, July and August.

The tenant seeks compensation in the amount of \$175.00 per month plus \$150.00 for damaged plants to a maximum of \$25,000.00 and waives any amounts over this maximum. In her monetary worksheet the tenant claims 12 months for 12 years for a total of 144 months. However I note that the tenancy began on January 5, 2002 for a

total of 10 years and 11 months at the time of the writing of this decision for a total of 131 months. Based on the tenant's claim of \$175.00 per month, for 131 months the total claim would be \$22,925.00 plus \$150.00 for damaged plants.

The tenant submits that there are smokers in two of the units around her and the landlord has failed to stop them from smoking on their balconies despite having a posted no smoking policy; that the landlord, despite complaints from this tenant, has failed to deal with a tenant who has a loud motorcycle that leaves the parking area just outside her unit early each morning; and the landlord has failed make specific repairs to her fan in the bathroom.

The landlord submits that the landlord has introduced a new no smoking policy but that they have not put this requirements in tenancy agreements as of yet and they still have two tenants who are smokers residing in the building. The landlord testified they have been working with those tenants to try to get them to change their behaviour. I note there are no terms in the tenancy agreements submitted by either party restricting or promising a smoke free rental unit or residential property.

The tenant also seeks to have the locks on the rental unit changed because she has suspicions that the landlord has entered the rental unit in her absence and because she believes that she was singled out by the landlord for a bedbug inspection. The tenant confirmed in written submission that she was given written notice of the landlord's intent to complete the bedbug inspection.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - i. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - ii. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- b) The tenant
  - i. Has failed to comply with a material term, and
  - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

While the landlord submits the tenant has engaged in illegal activity by her actions of throwing a plant and some dirt at the landlord's contracted painter, I find the landlord

has failed to establish this act was illegal. I accept the tenant acted inappropriately and that the painter may have found the incident disturbing but I note that there was no police involvement; no police complaint; and no charges laid against the tenant for this conduct and as such I cannot determine the activity was illegal.

I agree with the landlord's position that the tenant breached a material term of the tenancy agreement, specifically clause 17 in that she interfered with the landlord's ability to complete maintenance on the unit. However, if a landlord intends to end a tenancy for breach of a material term they must provide the tenant with a notice that they have breached a material term and give them a reasonable time to correct the situation.

I find in the case before me the events occurred on September 1, 2012; that they were reported to the landlord on September 4, 2012; and the landlord issued a 1 Month Notice to End Tenancy on September 26, 2012 with no other notification in between. As such, I find the landlord is not able to end the tenancy based on this event. However, the tenant should consider herself sufficiently warned that this type of behaviour may, in future, provide the landlord with cause to end the tenancy.

I also find that the landlord did not provide the tenant with an opportunity to resolve this issued through the mechanism provided in the tenancy agreement itself that of a mediated settlement of restitution and reconciliation through the society's Board of Directors.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

In relation to the tenant's claims for compensation and to have the landlord comply with Section 28 of the *Act*, I find that despite the landlord's efforts to introduce a no smoking policy in the residential property there is no obligation under the tenancy agreement signed by these parties for the landlord to provide a smoke free environment and as such, I find the landlord has not breached Section 28 of the *Act* or any component of the tenancy agreement.

Further, as the tenant has provided no evidence that the tenant who uses a motorcycle and leaves the residential property parking area early in the morning to enter into public streets is contravening any local noise bylaws and in recognition that the residential property is in an urban centre, I find the tenant has failed to provide sufficient evidence the landlord is in breach of the *Act* or tenancy agreement.

I also find that while the tenant may have had legitimate noise complaints in the past regarding people playing music loudly these seem to be resolved. However, in regard to the complaints that are documented regarding the noises of children in the unit above her and combined with the knowledge that this property is of wood frame construction I find these complaints to be frivolous and unwarranted. These complaints all appear to be regarding activity that occurs during acceptable daytime hours.

In addition, while I recognize that the property has a mix of subsidized and non-subsidized units it is not clear why the landlord would not consider transferring the tenant to another subsidized unit should it become available. I note, however, that there is no requirement under the *Act* for a landlord to provide an alternate unit and that the landlord has offered the tenant assistance in relocating to other residential properties that may be more suitable for her needs.

While the tenant claims \$150.00 for damage to her plants she has provided photographs of several plants and despite some plants having paint splatters on them she only shows, at most, three dead plants. While there are three dead plants in her photographs I find the tenant has provided insufficient evidence to establish that these plants died as a result of the duration of the painting or any actions taken by the painters or landlord.

Section 32 of the *Act* requires a landlord to 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 for the age, character and location of the rental unit make it suitable for occupation by a tenant.

Section 33 of the *Act* allows a tenant to have emergency repairs completed if the emergency repairs are needed; the tenant has made at least 2 attempts to phone the landlord or their agent and following those attempts the tenant has given the landlord reasonable time to make the repairs.

The section includes defining emergency repairs as: urgent; necessary for the health or safety or anyone or for the preservation or use of the residential property, and are made for the purpose of repairing major leaks in pipes or the roof; damaged or blocked water or sewer pipes or plumbing fixtures; the primary heating system; damaged or defective locks that give access to a rental unit; or the electrical systems.

I find the tenant has failed to provide any evidence that the landlord has breached either Section 32 or 33. I also find the tenant has failed to provide any evidence, other than

her own suspicions that the landlord has gained access to the rental unit without her knowledge and I dismiss this portion of the tenant's Application.

While the tenant submits that the landlords had threatened her with eviction should she continue to make complaints, I find from the documents submitted into evidence by both parties that the landlord was providing the tenant with warnings about how her tenancy would be impacted should a certain behaviour continued. Warning a tenant of the potential of ending a tenancy is often seen as a requirement if a landlord seeks to end a tenancy for cause.

Further the tenant submits the landlord has contravened Section 95 of the *Act*. Contraventions of this section of the *Act* fall under the Residential Tenancy Branch's (Branch) Administrative Penalties procedures and as a result, I make no ruling on this matter in this decision. If the tenant believes she has grounds for such penalties I refer her to discuss the matter with an Information Officer at the Branch to find out the correct procedure.

### Conclusion

For the reasons noted above, I grant the portion of the tenant's Application to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord on September 26, 2012 and find the tenancy remains in full force and effect.

Further and based on the above, I dismiss the tenant's financial claim in its entirety, without leave to reapply.

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: December 3, 2012.

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Residential Tenancy Branch