



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION and MUTAL AGREEMENT**

Dispute Codes      CNL, OLC, MNDC, FF

### Introduction

This hearing dealt with the Tenant's Application, seeking an order to cancel a two month Notice to End Tenancy for the Landlord's use of the rental unit, for an order for the Landlord to comply with the *Residential Tenancy Act* (the "Act") or tenancy agreement, for a monetary order for compensation under the Act or tenancy agreement, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

### Preliminary Matters

At the outset of the hearing Legal Counsel introduced herself and her client. I was unaware that this Legal Counsel would be at the hearing. I explained to the Tenant and her Advocate that I knew the Legal Counsel for the Landlord through a business relationship. I explained to the Tenant that I had no personal or financial interest in the Tenant's case, and that I felt I could proceed in an unbiased manner, although I should disclose to the Tenant and her Advocate the fact I know the Legal Counsel and the Tenant had the option to request a different Arbitrator. I explained to the Tenant we could proceed with the matter or if she wanted to, we could attempt to find a different Arbitrator, or we could adjourn to have the matter put before a different Arbitrator as quickly as possible. The Tenant decided she would proceed.

During the course of the hearing, the parties came to a mutual agreement in regard to ending the tenancy, which is set out below. The parties did not resolve the monetary claim of the Tenant, therefore, that is the sole issue I have made a determination on.

The Landlord claimed to have not received some of the evidence submitted by the Tenant. The Tenant testified she sent this evidence by registered mail. Regardless, I find this evidence was not relevant to the sole issue to be determined by me, and make no findings on this issue.

#### Issue(s) to be Decided

Is the Tenant entitled to financial compensation?

#### Background and Evidence

The Tenant and the Landlord had been to one prior hearing, before a different Arbitrator, and a Decision was reached on September 21, 2012 (the "First Hearing"). The file number for the First Hearing is referenced on the cover page of this Decision.

In the First Hearing the Tenant was also disputing a two month Notice to End Tenancy for the Landlord's use of the rental unit. The Landlord had issued this Notice as they want the Landlord's son to move into the rental unit. These are the same reasons given in the second two month Notice to End Tenancy, which was before me.

The two month Notice to End Tenancy was cancelled in the First Hearing, as the Arbitrator in that matter found the Landlord had insufficient evidence to support the Notice to end the tenancy. The Landlord applied for a Review Consideration of that Decision which was not allowed. Following the unsuccessful Review, the Landlord issued the Tenant a second two month Notice to End Tenancy for the Landlord's use of the rental unit. Again the Landlord states they want their son to move into the rental unit.

The Tenant is claiming in this Application that the Landlord is targeting her because she has lived in the rental unit for 23 years and the rent is below market value. The Tenant claims that the stress of the uncertainty of the situation has caused her to suffer, "...hair loss, skin irritations and gastro-intestinal afflictions." [Reproduced as written.]

The Tenant is seeking \$994.00 in damages for this stress and for the loss of quiet enjoyment of the rental unit, which is the equivalent of two months' rent. The Tenant characterizes the behaviour of the Landlord as harassment.

The Tenant testified that she has had very little contact with the Landlord or their Agents, aside from one instance involving garbage disposal at the rental unit, which was not relevant to the issues here.

In reply to these claims, the Landlord submits that it has a right under section 49 of the Act to end a tenancy if a close family member intends, in good faith, to occupy the rental unit. The Landlord further submits that they will be charging the son rent at less than market value, approximately equivalent to what the Tenant is paying now. The Landlord submits that the son has recently lost a portion of his income due to a reduction in hours at his place of employment.

The Landlord acknowledges that it intended to end the tenancy with this Tenant, rather than other rental units in the building, because of the low rent the Tenant has been paying. The Landlord submits that to end a tenancy in a rental unit which is paying full market value, in order to house their son with less than market value rent, would cause a financial loss to them.

The Landlord submits that a balance must be made between the Tenant's rights and those of the Landlord. The Landlord submits that although they had insufficient evidence for the First Hearing, they have supplied all the evidence required to support the new two month Notice to End Tenancy issued to the Tenant. The Landlord submits there is nothing, "... egregious or of a bad faith character in their actions." [Reproduced as written.]

### Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I make the following findings.

I find the Tenant's claim for monetary compensation must be dismissed.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Accordingly, the Tenant here must prove all of the following:

1. That the Landlord violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the Tenant to incur damages or a loss as a result of the violation;

3. The value of the loss; and,
4. That the Tenant did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Here I find the Tenant had insufficient evidence to prove the Landlord had violated the Act or the Tenant's right to quiet enjoyment. The Tenant herself testified that she has had minimal contact with the Landlord or its' Agents.

The definition of harassment is set out in the Oxford Canadian Dictionary as, "Trouble and annoy continually or repeatedly." K. Barber *et al*, *Oxford Canadian Dictionary*, 2d ed., (Don Mills, Ontario: Oxford University Press, 2006).

I find the Tenant has failed to provide sufficient evidence to show the Landlord set out here to annoy and trouble the Tenant repeatedly, or on a continual basis. Here the Landlord was exercising rights granted under the Act and issued two Notices to End tenancy for the same purposes – to accommodate a close family member. From the Tenant's own evidence, it appears the Landlord had minimal contact with the Tenant. For example, the Tenant testified she was served with the Notices to End tenancy in her mailbox.

Furthermore, while it is understandable that the Tenant may have been upset by the thought of having to vacate her rental unit after a lengthy tenancy, I find the Tenant has provided no medical evidence, such as a letter from her doctor, to prove she has suffered as claimed due to the Landlord.

For these reasons, I find the Tenant has failed to prove her monetary claims and I dismiss these without leave to reapply.

### **Mutual Agreement to End the Tenancy**

During the course of the hearing, the parties mutually agreed to end the tenancy, and agreed on other items. Pursuant to section 63 of the Act I record these in the form of a decision and grant an order of possession:

1. The Tenant and the Landlord agreed that the tenancy will end at **1:00 p.m. on January 31, 2013**, and that an order of possession should be granted in those terms;
2. For the compensation required with a two month Notice, the Tenant shall not be required to pay rent for the month of January 2013; and
3. The security deposit and interest will be dealt with in accordance with the Act at the end of the tenancy.

I also explained to both parties that should the Landlord fail to use the rental unit as stated in the Notice to End Tenancy, section 51 of the Act would provide the Tenant with a remedy. For clarity, I include the relevant portion of section 51:

...

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,**the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.**

[Emphasis added.]

As the parties came to a mutual agreement on the main subject of this matter, I find they should share the filing fee for the Application. **I order the Landlord to pay the Tenant the sum of \$25.00, forthwith, as a portion of the filing fee for the Application.**

Conclusion

The parties came to a mutual agreement to end the tenancy at **1:00 p.m. on January 31, 2013.**

The Landlord and Tenant shall share the filing fee for the Application, and I order the Landlord to pay the Tenant \$25.00 forthwith.

The Tenant's claim for monetary compensation is dismissed, due to insufficient evidence.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 07, 2012.

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Arbitrator  
Residential Tenancy Branch