



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNC, MNDC, LRE

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Notice to End Tenancy for Cause. The tenant was also seeking a rent abatement equivalent to one month rent and an order restricting the landlord's access.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

The issues to be determined based on the testimony and the evidence are:

- Should the One-Month Notice to End Tenancy for Cause be cancelled?
- Is the tenant entitled to compensation for loss of value to the tenancy?
- Should the landlord be ordered to restricted access?

### **Preliminary Matter**

At the outset of the hearing, the respondent/landlord stated that he agreed to cancel the One-Month Notice to End Tenancy for Cause.

Therefore, the issue relating to the portion of the application disputing the One Month Notice to End Tenancy for Cause is no longer under dispute.

The hearing proceeded with respect to the remainder of the tenant's claims.

## **Background and Evidence**

The burden of proof is on the tenant to justify the monetary claim for damages or loss and to prove that there is sufficient reason under the Act to restrict the landlord's access.

The tenancy began on August 1, 2012 with rent set at \$1,700.00 and a security deposit of \$850.00 and pet damage deposit were paid.

The tenant testified that the landlord's visits to the residence were occurring too frequently and the tenant feels that this interferes with the family's right to quiet enjoyment under the Act. According to the tenant, the landlord has appeared on the premises for various purposes almost every weekend. The tenant stated that the landlord's issuing of a One Month Notice to End Tenancy for Cause also impacted the tenant and caused undue stress. The tenant testified that they had made all of the repairs to the rental unit suggested by the landlord. The tenant feels entitled to a rent abatement equal to one month rent in the amount of \$1,700.00.

The landlord testified that he only accessed the unit when necessary to inspect or to permit trades persons to give estimates for repairs and renovation work. The landlord stated that the house was listed for sale briefly in March 2013, but it has now been taken off the market due to condition issues that were caused by the tenant.

The landlord pointed out that the frequency of required access has diminished because there is no longer any need to show the rental unit to realtors and their clients. According to the landlord, the repairs done by the tenant are not up to the expected standard, but he has nonetheless cancelled the One Month Notice to End Tenancy for Cause.

The landlord disputed that any compensation to the tenant is warranted.

## **Analysis**

### **Monetary Claim**

With regard to the portion of the tenant's application seeking monetary compensation, I find that an Applicant's right to claim damages from another party falls under section 7 of the Act which states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants an arbitrator the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*]; and
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 29 (1) of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of the entry or not more than 30 days before the entry or unless the landlord gives the tenant written notice at least 24 hours and not more than 30 days before the entry.

The Act requires that the notice, stating that the landlord will be accessing the unit, must include the purpose for entering, which must be reasonable, as well as the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

A landlord may gain entrance if an emergency exists and the entry is necessary to protect life or property and the Act permits a landlord to inspect a rental unit monthly in accordance with subsection (1) (b).

With respect to the tenant's claim for monetary compensation, I find that the test for damages has not been met because the tenant has not proven a significant violation of the Act by the landlord with respect to sections 28 and 29, nor a tangible monetary loss or loss in value of the tenancy pursuant to section 7 of the Act. For these reasons, I find that the monetary claim must be dismissed.

#### Restrict Landlord's Access

In regard to the tenant's concerns about protecting the family's quiet enjoyment by limiting the landlord's attendance on the property, the parties engaged in a mediated discussion, the outcome of which was a mutual agreement that the landlord would limit his access the property to two weekend visits per month and would give proper notice

under the Act. The parties also agreed to communicate in written form if any concerns arise.

Given the above, I find that the tenant's claim for a rent abatement of \$1,700.00, equal to one month rent must be dismissed. I further find that the issue relating the One Month Notice to End Tenancy for Cause and the dispute about the frequency of the landlord's access are matters that have been resolved between the parties.

I hereby dismiss the portion of the tenant's application seeking monetary compensation without leave to reapply. I hereby order that the One Month Notice to End Tenancy for Cause dated March 30, 2013 is cancelled on consent. The parties have resolved the remainder of the tenant's application by mutual agreement.

### **Conclusion**

The portion of the tenant's application seeking monetary compensation is dismissed, the request to cancel the One Month Notice to End Tenancy for Cause is granted and the remaining issue relating to the landlord's access has been resolved.

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: May 08, 2013

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Residential Tenancy Branch

