



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC

### **Introduction**

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on May 25, 2013. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord resides on May 28, 2013. The landlord provided the Residential Tenancy Branch with photographs and documents but failed to provide the tenants with copies of the same. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling a one month Notice to End Tenancy dated May 24, 2013?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The tenancy commenced approximately 19 months ago. The present rent is \$500 per month payable on the first day of the month. The tenant did not pay a security deposit.

### **Grounds for Termination**

The Notice to End Tenancy relies on section 47(1)(f) of the Residential Tenancy Act.

That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

The landlord seeks to end the tenancy based on the following:

- The landlord testified the tenant failed to properly clean the front and back yard and she is afraid that she will be receiving a Notice from the City to clean the yard in the immediate future.
- The tenant failed to properly maintain the yard by cutting the grass on a regular basis. As a result the grass is overgrown and the root system for the grass is in ruins. She testified she will have to put in new grass and expects this will cost a few hundred dollars.
- The tenant has tampered with the swamp cooler system (for the air conditioner) but she does not know how much it will cost to repair or replace.
- The tenant has denied her and her repair people access to the rental property.
- The tenant's dog bit her when she attempted to conduct an inspection. The tenant referred to the photographs of her which show significant bruising.
- She testified she and her agents are afraid to come onto the property to make repairs and to renovate because of the presence of the dog.
- The tenant has allows a considerable amount of junk to be left in the front and back yard.

The tenant disputes much of the evidence presented by the landlord and in particular the following:

- He disputes that he has caused damage of any sort to the rental unit or rental property.
- He testified that the swamp cooler system is now working after he made some repairs.
- He stated that he has not received any complaints from the city or neighbors about the condition of the rental property.
- He denied that his dog bite the tenant and denied that he has hindered access to the rental property.
- He acknowledged that he has a camper parked on the rental property. However, he testified the landlord has exaggerated the condition of the property and that the rental unit does not need any repairs.

### **Analysis**

The landlord has the burden of proof to establish sufficient grounds to end the tenancy based on a balance of probabilities. In determining whether to cancel a Notice to End Tenancy an arbitrator is limited to considering the grounds identified by the landlord in the Notice to End Tenancy. In this case the landlord alleges the tenant has caused extraordinary damage to the rental unit or rental property.

The landlord alleged the tenant damaged the swamp cooling system. The tenant testified it is operational. Both parties acknowledged that it is an old system. The landlord failed to present any evidence as to how much it would cost to repair. In the absence of evidence as to cost I determined that the landlord failed to prove the tenant caused extraordinary damage to the swamp cooling system.

The landlord alleged the tenant's failure to cut the grass will result in the landlord having to replace the grass with an estimate of a few hundred dollars. The photographs show that the front and back yards are overgrown. However, the landlord did not present

evidence as whether it would be necessary to replace the grass or whether a cut would be sufficient.. The tenant denies that it would be necessary to replace the grass. While the landlord may have a claim against the tenant for damage to the yard, I determined the landlord failed to prove this amounts to extraordinary damage.

The landlord failed to present evidence of extraordinary damage to the rental unit or the rental property. The City has not yet given the landlord an order to clean the property. The landlord has failed to present evidence as to how much it would cost to clean the property. The landlord made a number of other allegations about the tenant alleging the tenant is denying her access to the rental unit and putting her property at risk. However, these were not identified in the one month Notice to End Tenancy and cannot be considered as a ground for ending the tenancy in this proceeding.

### **Determination and Orders**

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy based on the grounds set out in the Notice to End Tenancy dated May 24, 2013. **As a result I ordered that the Notice to End Tenancy be cancelled.** The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful in this application I ordered that the landlord reimburse the tenant the cost of the filing fee in the sum of \$50 such sum may be deducted from future rent.

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: June 19, 2013

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Residential Tenancy Branch