



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, DRI, CNC, MNR, MNDC, OLC, ERP, RP, PSF, LRE, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; for several orders to have the landlord to comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord as well as translators for the landlord and a witness for the tenant.

The hearing was originally convened on July 16, 2013 and despite the landlord bringing someone to translate for her there remained difficulty for the landlord to understand the proceedings and respond to direct questions. As a result, I adjourned the hearing to allow the landlord time to arrange for a translator and the hearing was reconvened on July 30, 2013.

At the outset of the hearing I confirmed the tenant received a 1 Month Notice to End Tenancy for Cause on June 1, 2013 and file her Application for Dispute Resolution seeking to cancel the notice on June 4, 2013, within the 10 days allowed under Section 47. As such, I find the tenant did not require additional time to apply to dispute the notice and I amended her Application to exclude the matter of additional time to submit her Application.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in the portion of her Application seeking to cancel the 1 Month Notice to End Tenancy for Cause.

At the outset of the hearing the tenant submitted that she has not been staying at the rental unit until just prior to the hearing and that she intends to vacate the property at the end of August 2013.

### 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 an order to have the landlord complete repairs; to

complete emergency repairs; to provide services or facilities required by law; to restrict the landlord's access to the rental unit; and to a monetary order for compensation for damage or loss and return of monies paid for a non-compliant rent increase, pursuant to Sections 28, 29, 32, 33, 42, 43, 47, 67, and 72 of the Act.

### Background and Evidence

The parties agree the tenancy began on August 2, 2008 for a monthly rent of \$550.00 due on the 1<sup>st</sup> of each month with a security deposit of \$210.00. The parties also agree that beginning in March 2010 the tenant began paying rent in the amount of \$600.00.

The parties agree the landlord did not provide written notice of such a rent increase. However the landlord's submit they had a verbal agreement with the tenant for the rent increase. The tenant submits that there never was such an agreement and that, in fact, she informed the landlord that it was an illegal rent increase. The parties agree the tenant has paid the additional \$50.00 since March 2010.

The parties provided a copy of a 1 Month Notice to End Tenancy for Cause dated June 1, 2013 with an effective date of June 1, 2013 citing the tenant is repeatedly late paying rent; the tenant has allowed an unreasonable number of occupants in the unit; the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant has engaged in illegal activity that has or is likely to damage the landlord's property; the tenant has not done required repairs to the unit.

The landlord submits:

- The tenant has failed to pay rent on time for several months but the landlord could not identify which specific months the tenant was late paying rent. The landlord submits no receipts were issued because the tenant did not ask for them;
- The tenant has allowed her boyfriend to move into the rental unit and at the start of the tenancy the landlord had only agreed to have the tenant move in. The landlord stated the rental unit was a two bedroom unit and by allowing her boyfriend to move in there were two people living in the unit;
- The tenant and her boyfriend fight once a week and at all hours of the day and night; that police have been called; and the tenant had been given verbal warnings. The tenant states that there is not constant or ongoing fighting in the unit and she has not been provided with warnings from the landlord;
- There is damage to a door in the rental unit that is a result of the fighting the landlord referred to above. The landlord submits that the fighting was the illegal activity. The landlord has not submitted any documentary evidence, such as police reports, confirming any illegal activities; and
- The tenant has failed to allow the landlord to enter to the rental unit to complete repairs and as a result has failed to make require repairs. The tenant submits

that she is willing to allow the landlord access as long as the landlord provides handwritten notice that is signed by the landlord of her intent to enter to make repairs.

The tenant submits she has made requests for the landlord to make several repairs and emergency repairs. The only documented request for repairs and other requests of the landlord submitted into evidence by the tenant were requests dated June 14, 2013 and include:

1. Painting; carpet replacement; new kitchen; cupboards and cabinets; a mould inspection;
2. For the landlord to provide a copy of the move in Condition Inspection Report;
3. A schedule for viewings for the landlord's potential purchasers of the property;
4. Provision of heat throughout the year as opposed to restricted to only winter months;
5. Reinstated of cable and internet after having it cut off without notice;
6. Requesting assisting in dealing with an ant problem;
7. Rent receipts; and
8. Disputing her increase that began in March 2010.

### Analysis

In relation to the tenant's claim for repairs and emergency repairs, I find the tenant has provided no evidence that she has made the requests for repairs; reinstatement of cable and internet; and assistance dealing with an ant problem prior to the June 14, 2013 which is after the tenant applied for dispute resolution services.

As such, I find her claim to have the repairs made and/or compensation for failing to do so premature and from the tenant's testimony that the tenancy is ending regardless of the outcome of this hearing by the end of August 2013 I find there is no need to order the landlord to make any of the repairs outlined. There was no evidence before me made the rental unit uninhabitable. I dismiss this portion of the tenant's Application.

Section 42 of the *Act* states a landlord may increase the rent after at least 12 months of the start of the tenancy or the last rent increase; that the landlord must provide notice of that increase at least 3 months in advance of the increase and that the notice must be in the approved form.

Section 43 allows a landlord to increase rent in the amount determined in the regulations; as ordered by the Director; or by written agreement by the tenant. As the parties agree rent was increased by \$50.00 in 2010 from \$550.00 to \$600.00 I note that the rent increase was in excess of 9% and the allowable rent increase according to the regulations for 2010 was 3.2%.

As such, and based on the testimony of both parties, I find the landlord did not provide written notice in the approved form of any rent increases and the landlord has failed to

obtain written consent from the tenant for a rent increase in excess of the annual allowable increase.

Residential Tenancy Policy Guideline 37 states that payment of a rent increase in an amount that is more than allowed annual increase does not constitute a written agreement to a rent increase in that amount.

Therefore, I find the tenant is entitled to reimbursement of all of the rent increase paid from March 2010 up to and including August 2013 or 42 months at \$50.00 per month for a total of \$2,100.00. I note that should the landlord wish to raise the rent for future rent payments she must ensure that the increase is compliant with the provisions of Section 42 and 43 of the *Act*.

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 is repeatedly late paying rent;
- b) There are an unreasonable number of occupants in a rental unit;
- c) The tenant or a person permitted on the residential property by the tenant has
  - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- d) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - i. Has caused or is likely to cause damage to the landlord's property,
- e) The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time.

However, in the case before me I find the landlord has failed to provide any evidence that:

- The tenant is repeatedly late paying rent;
- Two people living in a 2 bedroom rental unit is an unreasonable number of occupants;
- In light of the tenant's denial of any disturbing activity, the tenant has caused any disturbances to the landlord or other occupants and that any of those disturbances were unreasonable. In addition, the landlord has failed to provide any evidence to establish the tenant was warned, in writing, that failure to adjust behaviour could result in an end to the tenancy;
- The tenant engaged in any illegal activity at all;
- The tenant has failed to make repairs but instead they have established that they have not made repairs to the unit because she failed to allow them access.

For these reasons, I find the landlord has established any cause to end the tenancy.

Conclusion

Based on the above, I order the 1 Month Notice to End Tenancy for Cause issued by the landlord on June 1, 2013 is ineffective and the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary in the amount of **\$2,100.00** comprised of the overpayment of rent due to a non-compliant rent increase.

I note that if the tenant did not pay the additional amount for her August 2013 rent then the above order must be reduced by \$50.00.

This order must be served on the landlord. If the landlord fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: August 06, 2013

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Residential Tenancy Branch

