



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OLC, RP, RPP, OPC, OPB, MNR, MNSD, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside notices to end this tenancy and compelling the landlord to comply with the Act, perform repairs and return the tenant's property. The landlord filed a cross-application which was heard together with the tenant's application. The landlord seeks an order of possession, a monetary order and an order permitting him to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the landlord advised that he did not wish to pursue the notice to end tenancy for unpaid rent. Accordingly, I consider the claim for an order of possession based on a notice for unpaid rent to have been withdrawn and therefore the tenant's application to dispute that notice is unnecessary. The hearing proceeded to deal with the notice to end tenancy for cause (the "Notice").

The Residential Tenancy Rules of Procedure permit me to sever issues which are not directly related. As the primary issue between the parties during this hearing was the Notice and whether the tenancy should continue, I found it appropriate to sever the remaining claims. The tenant's claim for an order compelling the landlord to comply with the Act, perform repairs and return the tenant's property and the landlord's claim a monetary order and an order permitting him to retain the security deposit are therefore dismissed with leave to reapply.

### Issue to be Decided

Should the Notice be set aside?

### Background and Evidence

The parties agreed that the tenancy began on February 1, 2013 and that rent was set at \$1,250.00 per month, payable on the first day of each month. The landlord served the tenant with the Notice on December 10, 2013. The Notice alleges as follows:

- the tenant is repeatedly late paying rent;

- he has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- he has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- he has put the landlord's property at significant risk;
- he has engaged in illegal activity that has damaged the landlord's property, adversely affected the quiet enjoyment, security, safety or well being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord;
- he has caused extraordinary damage to the unit;
- he has not done required repairs of damage to the unit; and
- he has breached a material term of the tenancy agreement.

The landlord testified that the tenant was late paying rent throughout most of the tenancy. The tenant testified that his rent was paid through direct deposit and that when the first day of the month falls on a weekend, the transaction does not complete until the next business day.

The landlord testified that there are more people living in the unit than are permitted under the terms of the tenancy agreement, but could not identify that part of the tenancy agreement which restricted the number of occupants.

The landlord testified that the tenant is using electric heat rather than wood heat as in the beginning of the tenancy, even though the landlord installed a new wood stove. The hydro bill is now excessively high and according to the landlord, the unit feels like a sauna. The tenant testified that the new wood stove went through a cord of wood in 3 weeks and that the fast consumption led him to switch to electric heat. The parties agreed that there was no agreement in place that the tenant would use exclusively wood heat to heat the building, although the landlord claimed that they agreed that the wood stove would be the primary heat source. The tenant disputed that they had engaged in any conversation about how the unit would be primarily heated.

The landlord testified that although he maintains a separate unit in the residential property for his own exclusive use and that he has used that unit less and less frequently because of the noise from the tenant arguing. The landlord testified that neighbours have complained about the tenant's drunken behaviour and his use of a bus on the property as a party venue. The landlord testified that the tenant has physically threatened a neighbour. He further testified that the tenant has used what was referred to during the hearing as a "party bus" as a business on the property.

The landlord provided letters from neighbours in which they described the tenant's behaviour as extremely disruptive and indicated that the tenant recklessly drives up and down the street and that the police have frequently been summoned to address disruptive parties. Several of the letters indicated that the tenant has set fires in the back yard and in one instance, in the street.

The tenant denied having caused a disturbance and stated that he has never threatened anyone. He testified that he is not operating a party bus business, but acknowledged that when his daughter graduated from high school, she had a party at which they used the bus. The tenant stated that his daughter and her boyfriend used to have loud arguments, but claimed that the boyfriend has moved out of the rental unit.

The landlord testified that the tenant denied him access to the rental unit on one occasion, slamming the door in his face. He further testified that the tenant had damaged the rental unit, creating a large hole in the wall. The tenant acknowledged that he had caused damage to the wall, but characterized it as a divot rather than a hole.

The tenant claimed that the landlord is overly controlling, claiming that he had a party during the day which the landlord insisted that he end at 3:00 p.m.

### Analysis

The Notice contains a number of allegations, most of which I find are not supported on the evidence. I find insufficient evidence to show that the tenant has repeatedly paid rent late and I accept his evidence that the parties have agreed that he will pay rent via direct deposit, which cannot be processed on weekends. I find that there is insufficient evidence to show that the tenant has caused extraordinary damage. While the unit may be damaged, I am not satisfied that this damage is extraordinary.

While the landlord has asked the tenant to repair damages to the rental unit, I find insufficient evidence to show that the damage in question is of a nature that must be repaired immediately and as such, I find that it is not the type of damage that would give rise to ending a tenancy.

I am not satisfied that the tenant is operating a business out of the rental property. While he may have parties which involve the bus, this does not prove that he is operating a business, legal or otherwise. I find that there is insufficient evidence to prove that the tenant is engaged in any illegal activity.

As the landlord was unable to show a clause in the tenancy agreement whereby the number of occupants in the unit is restricted, I find insufficient evidence to show that the tenant has breached a material term of the tenancy.

I accept the written evidence of the landlord's neighbours and I find that the tenant has lit fires in the back yard of the residence and on the street. I find that this activity has placed the landlord's property at significant risk.

I find it more likely than not that the tenant is in the practice of hosting parties which extend into the early hours of the morning, disrupting the neighbourhood and causing the neighbours to summon police. I find that this repeated and unrepentant activity has jeopardized the lawful right of the landlord and I further find that the tenant has unreasonably disturbed the landlord to the point where he is unable to stay in the suite in the residential property which he had reserved for himself.

I am satisfied on the evidence that the landlord has established grounds to end this tenancy. I dismiss the tenant's claim for an order setting aside the Notice and I grant the landlord an order of possession effective January 31, 2014. This order must be served on the tenant. Should the tenant fail to comply, the order may be filed in the Supreme Court and enforced as an order of that Court.

### Conclusion

The landlord is granted an order of possession and the tenant's claim for an order setting aside the Notice is dismissed. The remainder of the claims are dismissed with 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: January 22, 2014

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Residential Tenancy Branch

