



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

LANDLORD: OPC, FF  
TENANT: CNC, MNDC, OLC, LRE, RR

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession to end the tenancy and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, for compensation for loss or damage under the Act, regulations or tenancy agreement, for the Landlord to Comply with the Act, regulations or tenancy agreement, to restrict the Landlords' right of entry and for a rent reduction.

Service of the hearing documents by the Landlords to the Tenant were done by personal delivery on April 1, 2014 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on February 26, 2014 in accordance with section 89 of the Act.

Both parties confirmed the receipt of the other parties' hearing package.

Issues(s) to be Decided

Landlords:

1. Are the Landlords entitled to end the tenancy?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Has the Tenant incurred a loss or damage and if so how much?
3. Has the Landlords complied with the Act, regulations and tenancy agreement?
4. Should restrictions be placed on the Landlords right of entry?
5. Is the Tenant entitled to a rent reduction and if so how much?

Background and Evidence

This tenancy started on November 1, 2013 as a month to month tenancy. The tenancy is a shared tenancy with another tenant in the same suite, but with separate bedrooms. Rent is \$470.00 per month payable in advance of the 1<sup>st</sup> day of each month for the Applicant. The Tenant paid a security deposit of \$235.00 on November 1, 2013.

The Landlord said she served the Tenant with a 1 Month Notice to End Tenancy for Cause dated February 12, 2014 by personal delivery on February 12, 2014. The Effective Vacancy Date on the Notice on the Notice is March 15, 2014. The Tenant is living in the unit and the Landlords requested an Order of Possession for as soon as possible. The reason on the Notice to End Tenancy for Cause is the Tenant has significantly interfered with or unreasonable disturbed another tenant or the landlord.

The Landlord continued to say the Tenant has been unreasonable with the co-tenant in the rental unit. The Landlord said the Tenant has locked the co-tenant out of the rental unit on occasion for a few hours, the Tenant has made negative racial comments about the co-tenant, the Tenant has been very aggressive verbally with the Landlord and the Tenant has made a number of untrue claims about the Landlord and the unit. These claims include saying the Landlord said furniture was included in the rental unit when it is not and that there is no heat in the unit. The Landlord said they have had an electrician into the unit to check the furnace and the Landlord said the furnace was in full operation. As well the Landlord said they supplied the Tenant with portable heater to assist in heating her room if she wanted it warmer. The Landlord said the furnace heats the whole house so the Tenants room is affected by the rest of the house.

The Landlord continued to say the co-tenant has complained many times about the Tenants actions and behaviour and the co-tenant wrote a letter advising the Landlord that she may move out because of the Tenant's behaviour. The Landlord said the co-tenant has not moved out, but is very concerned about the Tenant's behaviour. The Landlord continued to say the co-tenant has been a tenant since 2012 with other co-

tenants and there have not been any problems. The Landlord said the problems began when the Tenant moved into the rental unit.

The Tenant said that she was a little unorganized because she has been very busy and she is 80 years old so it is hard for her to get around. The Tenant continue to say that the Notice to End Tenancy should be cancelled as her and the co-tenant get along and what the Landlord is saying is not true. The Tenant said she made her application because what the Landlord told her what they agreed to in the Tenancy Agreement and Shared Accommodation Agreement has changed and she has know lost her quiet enjoyment of her rental unit.

The Tenant said she is making the following claims:

1).The Tenant believes that she is the one that has been unreasonable disturbed and seriously interfered with not the co-tenant. The Tenant indicated that the co-tenant has had guests in the unit and she has not made proper arrangement with the Tenant prior to inviting the guests. The Tenant said the guests are gentlemen and she is concerned what the co-tenant is doing with her guests. The Tenant agreed that the gentlemen guest did not stay overnight and the visits were not for more than a couple of hours. The Tenant added that the co-tenant had a female guest that stayed overnight and they were very loud. As well the Tenant said the co-tenant goes to church on Friday night and comes home around mid-night which is very late and it disturbs her. The Tenant said she should be compensated for the co-tenant's guests and for the co-tenant disturbing her late at night. The Landlord responded by saying they cannot restrict the co-tenants guest as section 11 of the tenancy agreement allows the co-tenant to have guests.

2). The Tenant said secondly the Landlord said the unit was furnished, but the furnishings are the co-tenant's and she has moved some of the furnishings out of the common areas so the rental unit has very little furnishings and some of the kitchen ware has been removed as well. The Tenant said this is a loss of facilities and services and she should be compensated for it. The Landlord responded by indicating the tenancy agreement does not include furnishing. The Tenant said in response that her shared accommodation agreement indicates the rental unit is furnished. The Parties were told the tenancy agreement takes precedence over the shared accommodation agreement in this situation.

3). The Tenant continued to say the furnace does not work and it gets cold in the unit. The Tenant said she has had to sleep in the common area to try to keep warm. As well the Tenant said the electrician that came to fix the furnace said the whole house needed rewiring. The Tenant said she should be compensated for the lack of heat in the unit. The Landlord said they have had an electrician inspected the furnace and found no issues and they have given the Tenant portable heater to supplement the heat.

The Tenant was asked to itemize her monetary claim and she was unable clarify it at the hearing. From the written evidence the Tenant submitted it appears the Tenant's claim is for \$1,100.00 for late night disturbances by the co-tenant, \$1,200.00 for the visits of the co-tenant's gentleman guests (12 visits at \$100.00 per visit) and \$100.00 for loss of facilities and services due to the co-tenant removing her furnishing and kitchen ware. The Tenant said her claim is \$2,400.00 for the loss of quiet enjoyment of her rental unit.

With regard to the Landlord entering the Tenants unit the Landlord said they have given 24 hour Notices to the Tenant or have come into the unit when requested to by the co-tenant. The Tenant agreed that the Landlords have given 24 hour Notices, but the Landlord has changed the time on at least one occasion.

The Tenant said in closing that she wants to continue with the tenancy and she believes she is entitled to \$2,400.00 for loss of quiet enjoyment of her rental unit.

The Landlord said in closing that the Tenant has been a problem since she moved in and they want to end the tenancy. As well the Landlord is concerned if the Tenant is not evicted the co-tenant will move out and it will be very difficult to find a new co-tenant that will live with the Tenant. The Landlord also said they may have to sell the property.

### Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the co-tenant and the Landlords. In a situation of a co-tenancy with tenants that are not related or friends it must be understood that issues will arise and the parties must work together to resolve them. When the issues cannot be negotiated then the parties can applied for Arbitration. Arbitration will interpret the Act, regulations and tenancy agreement, but it may not be able to change the behaviour of the parties. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. The Landlord's reasons for the eviction notice are because the Tenant and the co-tenant cannot get along. I find there has been no loss or damage to the co-tenant or the Landlord and there have not been any police charges in this tenancy. In this situation it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date February 12, 2014 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

Consequently I dismiss without leave to reapply the Landlord's application for an Order of Possession.

With regard to the Tenant's monetary claim for compensation the Tenant must prove a real loss has incurred in order to be successful with a monetary claim. The Tenant may have been inconvenienced by the co-tenants late entry on Friday nights and by her guests visiting her, but the Tenant has not proven a real loss. The Tenant has not proven any consequences of the co-tenants actions except her perception of being inconvenienced. As a result I dismiss the Tenant's claim for compensation of \$1,100.00 for late night disturbances by the co-tenant and \$1,200.00 for the co-tenant's guests visiting her. The co-tenant is allowed to enter the unit at any time day or night and the co-tenant is allowed to have guests in accordance to section 11 of the tenancy agreement.

With respect to the Tenant's claim for loss of facilities and services as a result of the co-tenant removing furnishing and kitchen ware; I find the tenancy agreement does not include these things and therefore there is no loss. Consequently I dismiss the Tenant's monetary claim of \$100.00 for loss of facilities and services.

The Tenant's monetary claim as well as her request for a rent reduction resulting from her monetary claim is dismissed without leave to reapply.

Further I find the Landlord has complied with the Act, regulations and tenancy agreement as this dispute is a result of co-tenants not getting along.

In addition I order the Landlord to issue 24 hour Notices to the tenants when the Landlord is planning to enter the rental unit and I instruct the Landlord to comply with the information on the 24 hour Notice.

As the Landlord has been unsuccessful in this matter I order the Landlord to bear the cost of the filing fee of \$50.00 which they have already paid.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated February 12, 2014 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The Landlord's application is dismissed without leave to reapply.

The Tenant's monetary claim is dismissed without 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: April 16, 2014

---

Residential Tenancy Branch

