



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, MNDC, RP, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy – Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order for repairs - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Preliminary Matter

At the onset of the Hearing the Tenant stated that her correct and legal last name is different than the name used by the Tenant in the application and the Tenant requested that her legal name be used for this proceeding. Given this information, I amend the application to use the Tenant’s legal name as requested. The Tenant also stated that she did not receive the Landlord’s evidence package. The Landlord states that the package was sent either registered mail or priority post on May 15, 2014. The Landlord did not have a tracking number to provide as evidence of registered mail. The Tenant asks for an adjournment in order to obtain the evidence package. The Landlord asks that no adjournment be granted and that the Landlord is willing to provide oral evidence only. As the Landlord was unable to provide reliable evidence of how the package was given to the Tenant, I decline to consider the evidence package. Given the nature of the application, I also decline to adjourn as I will take oral evidence from the Landlord and am satisfied that this will not prejudice the Tenant. The Tenant confirmed that repairs are no longer required and withdraws the claim for repairs.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in July 2012. Rent of \$1,660.00 is payable monthly on the first day of each month.

The Landlord states that they served the Tenant with a one month notice to end tenancy for cause (the "Notice") sometime at the end of March 2013 by registered mail. The Landlord does not recall the date the Notice was signed or the effective date of the Notice. The Landlord recalls the Notice containing more than one reason but can only recollect the repeated late rent reason. The Landlord does not have a copy of the Notice and did not provide a copy of the Notice for the dispute. The Tenant recalls only receiving the Notice sometime at the end of March 2014. The Tenant recalls that the Notice contained repeated late payment of rent and some other reasons however the Tenant states that only a tick was made on a box with no reason specified.

The Tenant states that on February 17, 2014 the entire backyard fence of approximately 25 feet fell over exposing the back yard of the unit to an immediate trail frequented by people and dogs. The Parties agree that the Landlord was informed immediately and that between March 9 and 14, 2014 the parties entered into negotiations for the Tenants to make the repairs. The Parties agreed that the negotiations failed and the Landlord obtained a contractor who made the repairs over a few days finishing on April 23, 2014. The Tenant states that while the fence was down, the Tenants had no private use of the backyard for themselves and their child, who would play in the back yard, and that they had security concerns as the yard was open to people and pets all day and night. The Tenant claims compensation of \$330.00 and states that this amount is based on 10% of the monthly rent payable over three months.

The Landlord states that it took a couple of weeks to attend to the unit to see the extent of damage and make plans for its repair and that after the negotiations with the Tenant broke down it took them a reasonable time to find a contractor and to begin the repairs. The Landlord

states that two months is not a reasonable amount of time to replace an entire fence. The Landlord states that the Tenant had use of a deck that was not affected by the fence and that having lived at the dispute address themselves, knew the neighbourhood to be safe.

### Analysis

Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Given the lack of a copy of the Notice and considering that the Landlord does not recall details of the Notice, I find that I cannot determine if the notice is effective. As such I find that the Tenant is entitled to a cancellation of the Notice and the tenancy continues.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

Based on the undisputed evidence that the fence was not repaired for two months and accepting that given the location of the unit that the Tenants would have lost some privacy and use of the back yard, I find that the Tenants did suffer a loss of privacy and accept that the security risk was higher with the fence down. While the Landlord argues that two months is reasonable, I find that the presence of a public walking trail immediately behind the fence raises issues of privacy and security that requires a more timely response. However given that the

Tenant experienced no financial losses or costs, was able to draw blinds in the unit for privacy and had the use of the back yard deck, I find that the Tenants only substantial loss was the child's play time in the yard. I therefore find that the Tenants are only entitled to a nominal award of **\$100.00**. As the Tenant has been successful with its application I find that the Tenants are also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$150.00**. The Tenant may deduct this amount from future rent payable.

#### Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$150.00** in full satisfaction of the claim. If necessary, this order may be filed in the Small Claims Court and 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: May 28, 2014

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Residential Tenancy Branch

