



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for an order that the landlord comply with the Act, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant both attended the hearing and gave affirmed testimony. The landlord also called one witness who was permitted to act as agent for the landlord after the witness gave testimony. The parties also provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Should the notice to end tenancy be cancelled?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for the amount of rent the tenant would pay to the end of the fixed term?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically the end date of the fixed term?

### Background and Evidence

The landlord testified that this tenancy began in 1997 and the tenant still resides in the rental unit. A tenancy agreement was signed by the parties on January 7, 2013 showing the start date of the tenancy as April 1, 1997 for a fixed length of time ending on January 1, 2018. Rent in the amount of \$415.20 per month is currently payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord has not collected a security deposit or a pet damage deposit from the tenant.

The landlord further testified that the tenant was served with a 1 Month Notice to End Tenancy for Cause on March 18, 2014 and a copy has been provided for this hearing. The notice is dated March 18, 2014 and contains an expected date of vacancy of April 30, 2014. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
  - Put the landlord's property at significant risk;
- Tenant has engaged in illegal activity that has, or is likely to:
  - Damage the landlord's property;
  - Jeopardize a lawful right or interest of another occupant or the landlord.

The landlord testified that the tenant has been running an unauthorized hairdressing salon business in the rental unit. Customers are coming and going and there is a lot of traffic. The landlord has also been attending at the rental unit for many years getting her hair done by the tenant at no charge. The landlord asked the tenant if he had liability insurance but the tenant responded that it wasn't necessary because he was covered under his business licence. Due to the amount of traffic, the landlord became concerned about liability and increased her insurance policy.

The landlord further testified that with respect to illegal activity, the tenant has installed a washer, dryer and dishwasher in the rental unit. A safety inspection was completed and checked out fine, but the tenant had no previous authorization to make such changes. One of the bedrooms has been turned into a laundry room requiring plumbing, venting and electrical; and another bedroom has been turned into a salon requiring more upgrades that the tenant had completed without the landlord's prior consent. The tenant also took out the dining room window and had patio doors installed, and took out the back door entirely replacing it with a wall. The landlord had told the tenant that he could paint and paper, but that's all.

The landlord contacted a city by-law inspector who completed an inspection which resulted in insufficient evidence of a charge of running a business.

The landlord further testified that the tenant has been threatening and aggressive toward the landlord, who is 72 years old, and the tenancy agreement was signed under duress. The tenant loses his temper and speaks to the landlord and the landlord's agent in a threatening, intimidating manner.

The landlord's witness testified that he went with the landlord to serve the notice to end tenancy on March 14, 2014 at the rental unit and the tenant lost his temper. He yelled at the witness to get out and was totally unrational. The witness left the rental unit and took the notice to end tenancy with him.

On March 17, 2014 the witness attended the rental unit again to give the tenant written notice to inspect the rental unit. The tenant answered the door and then slammed it shut. The witness taped a notice to inspect the rental unit to the door. The notice stated that the inspection was to take place on March 18, 2014 and the witness went back on that date. The tenant wasn't home but had left a note for the landlord that he had appointments. The locks to the rental unit had been changed, so the inspection could not take place. The landlord had already prepared a 1 Month Notice to End Tenancy for Cause, and the witness taped it to the door.

The landlord prepared a letter to the tenant requesting a key to the new locks and the witness went to deliver the note; the tenant was at home but would not take the note or let the witness in. Police were called and the tenant was confrontational and threatened to "flatten" the witness. The officer calmed the tenant down, and the witness was permitted into the rental unit and took photographs. The police officer gave the tenant the landlord's note, and the witness got a key.

The witness further testified that the changes made to the rental unit by the tenant were not known by the landlord until 2013 with the exception of the salon sink. No permits had been taken out for the electrical for any of the appliances installed.

The tenant testified that he has resided in the rental unit for 17 years, having moved in during May, 1997. When the landlord's witness attended on the scene aggression started by the witness telling the tenant what he was going to do. The tenant knew the landlord for 10 years prior to the tenancy and the landlord mentioned a rent-to-own prior to the commencement of the tenancy. Once the tenancy started, the landlord told the tenant that he could do whatever he wanted to the rental unit.

The tenant further testified that closing off the back door is easily reversible, and does not deny the other changes made to the rental unit. The value of the home is in the land, not in the building. The house is old and had green shag carpet in it at the commencement of the tenancy but it was removed and the landlord took it to install in her own home. The washer and dryer were installed in 1997. The tenant told the landlord that he wished to have them installed, and the landlord gave the tenant the name of a handy man who could do the work. The tenant called that person and that person did the installation. The dishwasher was installed by the same handy man sometime later in the same year.

The sliding glass door was installed with verbal permission by the landlord. The window that was in the dining room was removed and re-used in the back porch.

The tenant also testified that for the past 17 years, the landlord has attended the rental unit for the tenant to do her hair, which is happened every 4 to 6 weeks, but the landlord has not had her hair done since last year.

The tenant also testified that a safety inspector put a note on the door of the rental unit. The tenant called the safety inspector right away and an inspection was completed on March 27, 2014. The tenant was present during the inspection and all appliances and light fixtures were checked. The tenant has provided a letter dated April 8, 2014 from the inspector stating that there were no safety issues.

The tenant is not running a business in the rental unit and has retired as a barber. He continues to do hair for friends, relatives and the landlord.

The tenant requests that the notice to end tenancy be cancelled and that the landlord be ordered to comply with the tenancy agreement by honouring the ending of the fixed term.

### Analysis

Where a tenant disputes a notice to end tenancy the onus is on the landlord to prove the notice, which can include the reasons for issuing it. In this case, I have reviewed the notice and find that it is in the approved form and it contains information relevant to this tenancy.

With respect to the reasons for issuing the tenancy, I am not satisfied that the landlord has established that the tenant has put the landlord's property at significant risk. The landlord testified that the reason is in relation to the allegation of the tenant running an unauthorized hairdressing salon business in the rental unit, customers coming and

going and the tenant's lack of liability insurance. The tenant denies running a business, and I find that the landlord has failed to establish any significant risk.

The landlord also relies on the allegation that the tenant has engaged in illegal activity that has or is likely damage the landlord's property, and jeopardize a lawful right or interest of another occupant or the landlord. The landlord testified that the reason is related to the changes made to the rental unit. The landlord has admitted getting her hair done in the rental unit for years by the tenant and knew about the salon sink, but testified that the tenant made changes to the rental unit without prior authorization. The tenant denies that, and I accept the testimony of the tenant that the appliances were installed by a person who was recommended to the tenant by the landlord. The tenant also testified that they were installed in 1997. I find that the landlord has failed to establish any of the reasons for issuing the notice to end the tenancy, and I hereby cancel it.

However, the tenant does not deny losing his temper with the landlord's witness, who, I find was acting as an agent for the landlord at the time. The *Residential Tenancy Act* defines a landlord as:

“...”**landlord**”, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.”

The *Act* also permits me to make any order necessary to give effect to the rights, obligations and prohibitions under the *Act*, including an order that a landlord or a tenant comply with the *Act*, regulations or a tenancy agreement. I hereby order the tenant to recognize that the landlord has a legal right to appoint an agent, and that the agent is permitted to exercise powers and perform duties as a landlord. I further order the tenant to comply with the *Act* by repairing any damage to the rental unit that is caused by the actions or neglect of the tenant prior to the end of the tenancy.

With respect to the tenant's application for a monetary order, the tenant testified that the claim was in respect of ending a fixed term tenancy early. Having cancelled the notice to end tenancy, I find that the tenant's monetary application must be dismissed.

The tenant has not satisfied me that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the application.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of the application, and I order that the tenant be permitted to deduct that amount from a future month's rent.

### Conclusion

For the reasons set out above, the notice to end tenancy issued March 18, 2014 is hereby cancelled and the tenancy continues.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby order the tenant to comply with the *Residential Tenancy Act* by recognizing that the landlord is entitled to appoint an agent, and that agent is authorized to exercise powers and perform duties as a landlord.

I further order the tenant to comply with the *Act* by repairing any damage to the rental unit that is caused by the actions or neglect of the tenant prior to the end of the tenancy.

I further order the tenant to deduct the sum of \$100.00 from a future month's rent as recovery of the filing fee.

These orders are final and binding and may be enforced.

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 08, 2014

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Residential Tenancy Branch

