



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE, CNC, CNR, MNDC, AS, RR

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a One Month Notice to End Tenancy for cause; to cancel a 10 Day Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order to allow the tenant to assign or sublet because the landlord consent has been unreasonably withheld, and to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant withdrew his application to cancel a Notice to End Tenancy because the tenant's employment with the landlord has ended as no further notice of this nature has been served upon the tenant.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on April 08, 2014. The tenant later amended his application and served that upon the landlord in person on April 13, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act* when served by registered mail and on the same day when served in person.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the

landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the tenant entitled to have the One Month Notice to End Tenancy cancelled?
- Is the tenant entitled to have the 10 Day Notice to End Tenancy cancelled?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant allowed to assign or sublet the rental unit?
- Is the tenant entitled to reduce rent for repairs, services and facilities agreed upon but not provided?

Background and Evidence

The tenant testifies that he rented this entire unit on a month to month basis starting on May 01, 2013 at a monthly rent of \$1,050.00. However the landlord also allowed the tenant to sublet two rooms to roommates to help pay the rent. Each room mate paid rent for 350.00 per month plus \$25.00 towards cable. The tenant paid the remainder of the rent plus \$25.00 towards cable. Rent was due on the first of each month. The tenant testifies that the landlord passed away in December, 2013 and his wife is now the landlord.

The tenant testifies that he was served a One Month Notice to End Tenancy for cause on March 27, 2014. This Notice gave the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *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,*

*3) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*

*(i) Damaged the landlords' property*

*(ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property,*

*4) The tenant has caused extraordinary damage to the unit/site or property*

*5) The tenant has not done required repairs to the unit, site of property*

*6) The tenant has assigned or sublet the rental unit without the landlords' written consent*

The tenant disputes the reasons given on the One Month Notice.

The tenant testifies that the landlord also served the tenant with a 10 Day Notice to End Tenancy on March 03, 2014. This Notice indicates that the tenant owes rent of \$350.00. The tenant testifies that he did not receive a complete 10 Day Notice as the second page was not provided to the tenant. The tenant dispute that he owes rent to the landlord.

The tenant testifies that when he moved into the unit in May 2013, the previous landlord asked the tenant to carry out caretaking duties for the unit and the landlord would reduce the rent by \$100.00 per month. Two months after moving into the unit the tenant testifies that he discussed this again with the landlord as the tenant had been doing some maintenance work and cleaning the common areas and yard. The tenant was also advertising the landlord's units. The tenant testifies that he was not receiving the agreed upon \$100.00 from his rent. When the tenant mentioned it to the previous landlord the landlord told the tenant he could not afford to reduce the tenants rent at that time but that he would make it up to the tenant. However this landlord has since passed

away and the tenant therefore seeks to recover the \$100.00 rent reduction for services rendered for the last seven months.

The tenant testifies that the new landlord is saying she is going to evict the tenant and because of that the tenant is not allowed to sublet the third bedroom to a new tenant. The tenant testifies that he has always been allowed to have roommates since the tenancy started and this is therefore an agreement he had verbally with the previous landlord.

The tenant testifies that this landlord also removed the cable service to the unit at the beginning of March, 2014 and the tenant and his roommates have had to take cable out in their own name at a cost of \$75.00 per month. The tenant therefore seeks an Order to reduce rent by \$75.00 per month for the reduced facility.

### Analysis

When a landlord serves a Notice to End Tenancy upon a tenant the burden of proof falls to the landlord to provide evidence to support the reasons given on the Notices. The landlord has not appeared at the hearing to give sworn testimony nor has the landlord provided any documentary evidence. It is therefore my decision that the reasons on the One Month Notice to End Tenancy for cause have not been proven by the landlord and that Notice is therefore cancelled.

With regard to the 10 Day Notice to End Tenancy for unpaid rent; the landlord is required to provide the tenant with two pages of this Notice. If the landlord fails to do so it renders the Notice incomplete and consequently the Notice is invalid. Furthermore the landlord has provided no evidence to show that rent is outstanding and the tenant disputes that there is outstanding rent. Consequently the 10 Day Notice to End Tenancy is also cancelled.

With regard to the tenants claim for money owed of \$700.00 for work carried out as agreed with the previous landlord to maintain the unit. The burden of proof falls to the tenant in this matter to show that an agreement was in place and that the tenant carried out this agreement for seven months of his tenancy. I have insufficient evidence before me to show that a verbal agreement was in place between the tenant and the previous landlord and therefore the tenant has not met the burden of proof in this matter and this section of the tenants claim is dismissed.

With regard to the tenants claim to be allowed to assign or sublet the rental unit; the tenant has testified that he has always been allowed to sublet rooms in the unit. The landlord is preventing the tenant from subletting the third bedroom at this time. The tenant has shown that he has had roommates in the past and whether or not this was a written or verbal agreement between the tenant and the previous landlord, if the previous landlord allowed the tenant to do this then it is an implied term of the tenancy and as such the new landlord cannot unreasonable withhold her consent for the tenant to get a another roommate. However I caution the tenant that roommates are occupants of the rental unit and have no rights or obligations under the *Act*. The tenant remains responsible for the rental unit.

With regard to the landlord cutting off the cable service to the unit in March, 2014; the tenant has testified that he and his roommates were paying \$75.00 towards the cable in addition to their rent of \$1,150.00. If this cable has since been removed then the tenant are no longer required to pay the additional amount to the landlord for cable. The tenant seeks to recover \$75.00 for March, April and May for the cable the tenant has now had to install. I have considered the tenants claim and find if the tenant was paying an extra amount for cable on top of the rent of \$1,050.00 then if the cable is no longer provided by the landlord then the tenant is not entitled to a rent reduction as the amount was paid in addition to the rent. This section of the tenants claim is therefore dismissed.

Conclusion

The tenant's application to cancel the Notices to End tenancy is allowed. The one Month Notice to End Tenancy for Cause and the 10 Day Notice to End Tenancy for unpaid rent are both cancelled and the tenancy will continue.

I ORDER the landlord not to unreasonably withhold her consent to allow the tenant to sublet or lease a room to a roommate for the duration of the tenancy.

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 30, 2014

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Residential Tenancy Branch

