



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *CNC, DRI, MNDC, PSF, OLC, LRE*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for an order to cancel a 30 day notice to end tenancy for cause, for the landlord to provide services and to comply with the *Act* and to set conditions on the landlord's right to enter the rental unit. The tenant has also applied to dispute a rent increase and for a monetary order for compensation for the loss of her belongings.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony. The landlord informed me that he had submitted his evidence to the Residential Tenancy Branch Office and to the tenant, on the evening prior to this hearing. Since the landlord did not file his evidence in time to allow the Residential Tenancy Branch Office sufficient time to process the documents and allow the tenant an opportunity to respond, the landlord's evidence was not considered in the making of this decision.

During the hearing the landlord informed me that he had withdrawn the notice to end tenancy, prior to the hearing.

### **Issues to be decided**

Is the landlord responsible for the alleged loss of the tenant's personal belongings? Did the landlord impose a rent increase that is in keeping with legislation? Has the tenant been deprived of facilities that the tenancy agreement provides for?

### **Background and Evidence**

The tenancy started on December 01, 2011. The rental unit is located in a three level building which contains 6 rental units on the top floor with a shared washroom. The main floor is occupied by offices. The basement contains a recreational area, a kitchen and a washroom. The basement is shared by the six tenants.

The tenant stated that the landlord allows the recreational area in the basement to be used by mah-jong players, who are not tenants of the building. The games are played every day sometimes up to midnight. The kitchen is used to seat players if the recreational area is full. The landlord did not dispute this. The landlord also agreed that the mah-jong players use the washroom in the basement, use the microwave and access the kitchen for hot water.

The tenant stated that the mah-jong players started complaining about the smell that is generated from the tenant's cooking. In December 2012, the landlord notified the tenant of the complaints. The tenant stated in her written submission that her access to the kitchen continued to be impeded by the mah-jong players and as a result the tenant began to use the kitchen sparingly and had to eat in restaurants.

On April 01, 2014, the landlord served the tenant with a notice of rent increase of \$20.00 to be effective on July 01, 2014. The tenant has disputed this increase and filed a copy of the notice. The notice is handwritten and some parts are in a foreign language. The notice is not on the approved form that is prescribed by legislation.

The tenant stated that during the tenancy, the landlord entered her rental unit at least twice, in her absence and without providing her with notice to enter. The landlord stated that he had provided notice but the tenant was out of the country at the time of the annual inspections. The landlord did not provide any reasons for conducting two annual inspections while the tenant was away on vacation.

The tenant stated that upon her return in March 2014, she found that her DVD camera was missing. She reported this to the police. The tenant is claiming \$558.88 to replace her camera.

The tenant stated that her rice cooker which was brand new and still in the original packaging also went missing and was later found to be in the possession and use of another tenant. The matter was discussed and the landlord agreed that the caretaker had given this rice cooker to another tenant. The parties engaged in a discussion and the landlord agreed to settle the matter, by providing compensation to the tenant.

The landlord stated that the matter was settled and he was under the impression that the caretaker gave the tenant \$30.00 as compensation. The tenant denied having agreed to or received any compensation in the amount of \$30.00. The tenant is seeking \$177.98 to replace the cooker. During the hearing the tenant agreed to accept \$100.00 as compensation for the rice cooker.

The tenant testified that she was assigned a portion of the kitchen cabinet for storage and due to problems with missing items; she placed a lock on her assigned area. The tenant stated that the lock was broken several times and she reported every incident to the landlord.

The landlord agreed that the tenant reported a broken lock about 3-4 times and despite informing the other tenants not to break her lock, the break ins into the tenant's storage area continued. The tenant is claiming \$89.60 towards the replacement of locks and has provided a single receipt for the purchase of one lock in the amount of \$10.00.

### **Analysis**

#### **Rent Increase:**

As explained to the landlord pursuant to Section 43 of the *Residential Tenancy Act*, a landlord may impose a rent increase only up to the amount:

- (a) Calculated in accordance with the regulations,
- (b) Ordered by the director or
- (c) Agreed to by the tenant.

The allowable percentage rent increase for each calendar year is calculated according to the inflation rate. The rate for the year 2014 is 2.2%.

The landlord imposed a rent increase that was in excess of the allowable percentage for the year. Therefore, the rent increase is dismissed and the tenant will continue to pay rent in the amount of \$240.00 until the effective date of a valid notice of rent increase.

#### **Provide services and facilities**

Section 27 of the *Residential Tenancy Act* addresses terminating or restricting services or facilities. Pursuant to this section a landlord must not terminate or restrict a service or facility if

- a) The service or facility is essential to the tenant's use of the rental unit as living accommodation, or
- b) Providing the service or facility is a material term of the tenancy agreement

The tenant filed a copy of the tenancy agreement which clearly states that the facilities of the building are for the use of tenants and include "*toilets, washrooms, stoves and fridges*".

In this case, I find that the landlord permits the everyday use of the shared kitchen by people, who are not tenants. These people gather together every day, in the recreational area which adjoins the kitchen and the kitchen area if necessary, to play mahjong. These players complained about the tenant's use of the kitchen which resulted in a warning from the landlord and discomfort to the tenant. This caused the tenant to incur additional costs from eating out due to a decreased use of the kitchen.

The use of the kitchen is essential to the tenant's use of the rental unit and the landlord may not restrict this facility. The tenant is also obligated to keep the kitchen in a clean and safe condition after use.

#### Restrict the landlord's right to enter the rental unit

Section 29 of the *Residential Tenancy Act* addresses a landlord right to enter a rental unit. It states that a landlord must not enter a rental unit for any purpose unless the following applies:

- (a) The tenant gives permission at the time of the entry or not more than 30 days before the entry
- (b) At least 24 hour and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering, the date and time of entry.

I order the landlord to conduct any future entries into the rental unit in compliance with section 29.

#### Monetary claim

The tenant has applied for \$177.98 to replace her rice cooker that went missing. The landlord agreed that the caretaker had given the rice cooker to another tenant and agreed to compensate the tenant. The landlord was not sure whether the tenant had received any compensation and the tenant denied having received any.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

In this case the landlord stated that the tenant was awarded \$30.00 and the tenant denied this.

In the absence of any additional evidence to support his claim that the tenant had agreed to and received \$30.00, I find that the landlord failed to follow through with compensating the tenant for the loss of her rice cooker. The tenant provided an internet printout of a similar cooker that cost \$177.98 but agreed to accept \$100.00. I find that the tenant is entitled to \$100.00.

The tenant has claimed \$558.88 for the theft of her DVD camera. Since this is a criminal matter that has been reported to the police for follow up, I dismiss the tenant's claim.

The tenant has applied for \$89.60 towards the replacement of locks. The landlord agreed to pay \$30.00. The tenant did not provide adequate evidence to support her claim of \$89.60 and therefore, I award the tenant \$30.00 towards her claim.

Overall the tenant has established a monetary claim for \$130.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$130.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

### **Conclusion**

1. The rent increase is dismissed and the tenant will continue to pay \$240.00 as rent.
2. I order the landlord to allow the tenant full unrestricted use of the kitchen
3. I order the landlord to provide written notice to the tenant for access to the rental unit, in compliance with section 29.
4. I grant the tenant a monetary order in the amount of \$130.00.

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: July 15, 2014

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Residential Tenancy Branch

