



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF, LRE, OLC, RR

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenants on August 30, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on September 3, 2014. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated Augusts 29, 2014?
- b. Whether the tenants are entitled to an order suspending or setting condition on the landlord's right of entry to the rental unit.
- c. Whether the tenants are entitled to an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?
- d. Where the tenants are entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a month to month tenancy in writing. The tenancy began on August 13, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$700 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$350 on June 1, 2011.

### Grounds for Termination

The Notice to End Tenancy relies on section 47(1)(d)(iii), (g) and (h) of the Residential Tenancy Act. That section provides as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

...

(d) the tenant or a person permitted on the residential property by the tenant has

(iii) put the landlord's property at significant risk;

(g) the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [obligations to repair and maintain], within a reasonable time;

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The landlord testified that he recently installed hardwood floors in the rental unit at a cost of approximately \$4000. In order to protect the floors he also placed underlay and carpets. The tenants have removed the underlay and carpets and put them into storage without his consent. In doing so he submits the tenants have breached and put the landlord's property at "significant risk" and the tenants have breached a material term of the tenancy agreement. Paragraph 2 of the tenancy agreement provides that the tenants agree to "Not make any alterations to the premises (painting, wallpapering, window treatments, changing locks etc.) without first obtaining permission for the Owner, or agent for the Owner.

On August 20, 2014 the landlord gave the tenant written notice to correct the situation within 24 hours. The landlord objected to the presence of a pit bull terrier in the rental unit.

The tenants deny they have put the landlord's property at significant risk. They testified they have put area rugs in locations throughout the rental unit.

### Analysis

After carefully considering all of the evidence I determined the landlord has failed to prove that the tenants have put the landlord's property at "significant risk." The removal of the underlay and carpets but themselves is not sufficient evidence that an arbitrator can conclude the landlord's property is at significant risk. The tenants testified that much of the area is covered by an area rug. This is confirmed by the photographs produced by the landlord. There is insufficient evidence to establish the landlord's property is at significant risk. Further, I determined the landlord failed to prove the tenants have breached a material term of the tenancy agreement. I do not accept the submission of the landlord that the removal of the carpet and underlay is a material alteration as defined by the tenancy agreement. Finally, the landlord failed to prove that repairs are necessary and as a result there is no violation of section 47(1)(g). **For the reasons above I order that the one month Notice to End Tenancy dated August 29, 2012 be cancelled.**

I dismissed the tenant's application for an order suspending or setting condition on the landlord's right of entry to the rental unit and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. While the landlord has failed to comply with the provisions of the Residential Tenancy Act I do not find that the breaches to be so serious as to warrant an order. The parties acknowledged that the landlord needed to gain access through the tenants' unit in order to repair the unit of another tenant who has since left. The tenants also acknowledged the problems in regard have been reduced significantly in the last month or so. As a courtesy to the

parties I have included the provision of the Residential Tenancy regarding the landlord's right to access the rental unit.

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of 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 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Finally the tenants failed to present sufficient evidence to establish they are entitled to a reduction of rent.

Conclusion:

In summary I have ordered that the Notice to End Tenancy dated August 29, 2014 be cancelled. The tenancy shall continue. I dismissed the tenants' order suspending or setting condition on the landlord's right of entry to the rental unit and for an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. **As the tenants have had mixed success in this application I ordered**

**that the landlord pay to the tenants half of the cost of the filing fee or the sum of \$25 such sum may be deducted from future rent.**

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: October 24, 2014

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Residential Tenancy Branch

