



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, OPC, FF

### 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 Notice to End Tenancy was sufficiently served on the Tenant by posting on September 26, 2014. Further I find that the Application for Dispute Resolution filed by the Tenant was sufficiently served on the Landlord by mailing, by registered mail to where the landlord carries on business. Further I find that the Application for Dispute Resolution/Notice of Hearing was filed by the landlord was personally served on the tenant on November 10, 2014.

### Preliminary Matter:

The tenant seeks to rely on documents that were faxed to the Residential Tenancy Branch on November 13, 2014. The documents include letters from himself, his mother and photocopies of photographs of the rental unit. Those letters have not been signed. The photocopies are of extremely poor quality. The landlord objected on the basis that the tenant failed to serve her with copies of those documents and she does not know what evidence the tenant is relying on. The tenant acknowledged that he failed to serve her saying he was unfamiliar with the process. One of the fundamental principles of our legal system is that the other party has notice of what is going to be relied on by the other side. I determined those documents to be inadmissible as the explanation as to why the tenant failed to provide copies to the landlord is not satisfactory and it would significantly prejudice the landlord. This is not an appropriate case to grant an adjournment.

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 September 26, 2014?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on June 2, 2014 and end on May 31, 2015. The rent is \$750 per month payable on the first day of each month. The tenant paid a security deposit of \$375 at the start of the tenancy.

Grounds for Termination:

The grounds for termination as set out in the one month Notice to End Tenancy are as follows:

47(1) (f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

...

(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 seeks to end the tenancy based on the following evidence:

- The landlord received reports from other tenants on the same floor of a bad smell emanating from the tenant's rental unit. The landlord failed to provide evidence from those tenants.
- She conducted an inspection on June 27, 2014 with a pest control contractor. The rental unit was found to be in an extremely unsanitary condition displaying dirty surfaces, general mess and accumulated garbage throughout the unit. A bad odor of rotten garbage was emanating from the tenant's unit on a daily basis altering the air quality and smell of the entire floor and common area. There was no furniture at the time of the inspection.

- The tenant initially stated he was having problems with his toilet. The landlord offered to send a maintenance person but the tenant refused.
- After receiving further complaints from residents on the 4<sup>th</sup> floor about garbage smells emanating from his unit the landlord gave the tenant a breach notice in writing dated August 18, 2014 giving the tenant to August 25, 2014 to rectify the breach. .
- The landlord testified she inspected the rental unit on August 25, 2014 and determined the condition was better than it was but there was still a problem. However, the landlord did not follow the August 18, 2014 letter up with anything further in writing after she completed her inspection on August 25, 2014.
- On September 15, 2014 the landlord testified she received complaints from tenants below the tenant's rental unit of water coming from units above. The landlord testified this was caused by hair in the tenant's sink leading to a flood.
- Approximately one week later on September 24, 2014 she received further complaints from the tenants in the lower units about leaking. The landlord conducted inspection of the units above including the tenant's unit. She determined the leakage was caused by a paper towel in the tenant's sink. She testified she took photos at that time with her phone.
- The landlord testified the tenant's negligence has caused extraordinary damage to the rental unit, hallway and rental units below including to but not limited to the lifting of the laminate flooring etc.
- On September 26, 2014 the landlord delivered a letter to the tenant that stated "Following the inspection of your suite on September 25, 2014, where we have found the same unsanitary conditions as noted at previous inspection in August 25, 2014 and enclosing the one month Notice to End Tenancy.

The tenant disputes much of the landlord's evidence including but not limited to the following:

- The tenant acknowledged there was a mess in his rental unit during the inspection on June 27, 2014. He testified the rental unit was cleaned after that inspection. He further testified that the smell was caused by a problem with the toilet which he and a plumber friend fixed.
- The tenant testified that after the inspection on August 18, 2014 he cleaned the rental unit and it was not dirty or unsanitary..

- The tenant disputes the time line of the landlord. He testified the one month Notice had been served on him prior to the landlord taking the second overflow of water from his sink.
- The problem with the sink was a leaky faucet. The landlord has now fixed this problem and there have been no further issues.

Analysis - Tenant's Application:

After carefully considering the disputed evidence of the parties I determined the landlord has failed to establish sufficient cause to end the tenancy for the following reasons:

- I accept the submission of the landlord that there is an obligation on the tenant to ensure the rental unit is sanitary. Section 32(2) of the Residential Tenancy Act provides as follows:

**Landlord and tenant obligations to repair and maintain**

**32 (2)** A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

- The landlord served a breach letter on the tenant August 18, 2014. I am satisfied the tenant rectified the breach as set out in that letter. The landlord inspected the rental unit on August 25, 2014. The landlord failed to present sufficient evidence from that inspection to establish the tenant failed to maintain reasonable health, cleanliness and sanitary standards. This determination is supported by the fact the landlord did not take any further steps after she inspected the rental unit on August 25, 2014. Further, the photographs which the landlord testified were taken on September 25, 2014 are not sufficient to amount to a breach of section 32(2) of the Act.
- The landlord testified she received a number of complaints from other tenants. However, the landlord failed to present evidence from these tenants.
- The landlord alleged the negligence of the tenant leading to the overflow of water has caused extraordinary damage to the rental and rental property. The landlord failed to provide evidence as how much it will cost to make repairs. The overflows occurred in September and the landlord has not presented any evidence as to whether steps to

repair the tenant's unit or the units below have been taken and if so what is the cost of such repairs. In the absence of this evidence I determined the landlord failed to prove the tenant caused extraordinary damage.

**As a result I ordered that the one month Notice to End Tenancy dated September 26, 2014 be cancelled. The tenancy shall continue.**

Landlord's Application - Analysis Order of Possession:

I dismissed the landlord's application for an Order for Possession and the cost of the filing fee as I determined, for the reasons set out above that the landlord failed to establish sufficient cause to end the tenancy. I have ordered that the one month Notice to End Tenancy dated September 26, 2014 be cancelled.

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: November 21, 2014

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Residential Tenancy Branch

