



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

*OPC, OPQ, OPB, CNC, MNDC, OLC, FF*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause and the tenant applied for an order to cancel the notice to end tenancy. The tenant also applied for a monetary order for compensation and for the filing fee and for an order directing the landlord to comply with the *Act*. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant moved out on September 30, 2014 and therefore the landlord's application for an order of possession and the tenant's application to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act*, are moot.

Accordingly, this hearing only dealt with the tenant's monetary claim for compensation and for the filing fee.

### **Issues to be decided**

Is the tenant entitled to a monetary order for compensation and for the filing fee?

### **Background and Evidence**

The tenancy started on April 01, 2014 for a fixed term of six months, ending on October 01, 2014. A tenancy agreement was filed into evidence. At the end of the fixed term the tenancy would continue on a month to month basis. Rent was \$950.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$475.00. The rental unit consisted of a suite on the ground floor of the landlord's home. The landlord lives upstairs.

The tenant stated that on August 31, 2014, the landlord gave him a handwritten notice to end the tenancy effective October 01, 2014. The reason for the notice was that the landlord's daughter wanted to move into the rental unit. The tenant informed the landlord that the hand written notice was not valid and gave the landlord the proper forms which consisted of a two month notice to end the tenancy for landlord's use of property, pursuant to s.49. The landlord did not serve the tenant with this s. 49 notice but on September 12, 2014 served the tenant with a one month notice to end tenancy for cause, pursuant to s.47.

The tenant disputed the notice on September 22, 2014, but moved out a week later on September 30, 2014. The tenant did not provide a forwarding address to the landlord prior to the hearing. During the hearing the tenant provided a forwarding address to the landlord.

The tenant stated that the landlord would play loud music and enter the rental unit without giving the tenant at least 24 hours notice and for these reasons the tenant was forced to move out. The landlord denied all allegations and stated that she listened to music occasionally but had no idea that it was disturbing the tenant because he never informed her. The tenant argued that he attempted to knock on the landlord's door to let her know, but she did not hear the knock because of the loud music. The landlord also stated that she provided written notice of entry to the tenant and filed copies of her notices to enter.

The tenant stated that the landlord ended the tenancy because her daughter wanted to move in and therefore he was entitled to one month of rent free stay. The tenant applied for a total of \$1,425.00 which consists of one month's rent (\$950.00) plus the return of the security deposit (\$475.00).

## **Analysis**

### Landlord's application

The landlord gained possession of the rental unit on September 30, 2014 and therefore the landlord's application for an order of possession is moot and accordingly dismissed.

### Tenant's application

Pursuant to section 51 (1) of the *Residential Tenancy Act*, a tenant who receives a notice under section 49 (*Landlord's use of property*) is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

In this case, the tenant did not receive a notice to end tenancy under section 49 and is therefore not entitled to the equivalent of one month's rent. Accordingly, the tenant's claim for \$950.00 is dismissed.

The tenant moved out without providing the landlord with a forwarding address. The landlord now has the tenant's forwarding address and will deal with the return of the security deposit pursuant to s. 38 of the *Residential Tenancy Act*

The tenant's application for the return of the security deposit was made during the tenancy and was therefore premature. Accordingly, this portion of his application is dismissed with leave to reapply, in the event that the landlord does not return the deposit or make a claim against it within 15 days from today's date (November 07, 2014).

The tenant has not proven his claim and must therefore bear the cost of filing his own application.

### **Conclusion**

The applications of both parties are dismissed.

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 07, 2014

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Residential Tenancy Branch

