



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, RP, CNC

### 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 sufficiently served on the Tenant on November 13, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing and the Amended Application for Dispute Resolution was sufficiently served on the landlord. 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 November 13, 2014 and setting the end of tenancy for December 31, 2014?
- b. Whether the tenant is entitled to an order disputing an additional rent increase?
- c. Whether the tenant is entitled to a repair order?
- d. Whether the tenant is entitled to a monetary order and if so how much?

### Background and Evidence

The tenancy began on in late September 2013. The oral tenancy agreement provided that the tenant(s) would pay rent of \$500 per month payable in advance on the first day of each month. The landlord did not ask and the tenant did not pay a security deposit.

### Tenant's Application to Cancel a Rent Increase:

The tenant testified that in October 2014 the landlord orally told the tenant the rent would be increased by \$50 per month commencing November 1, 2014. I determined the oral rent increase is of no force and effect. In order for a rent increase to be effective it must comply with the Residential Tenancy Act which requires that it be given on the approved form and give the tenant 3 months notice. Further, unless the landlord obtains an order from an arbitrator for an additional rent increase it is limited to the amount set by Regulations which for is presently 2.5% for those increases that are to take effect in 2015.

### Tenant's Application for Cancel the one month Notice to End Tenancy:

The Notice to End Tenancy served by the landlord relies on section 47(1)(c) and (e)(i) which provides as follows:

#### Grounds for Termination

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

(c) there are an unreasonable number of occupants in a rental unit;

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

(i) has caused or is likely to cause damage to the landlord's property,

The landlord testified the tenant has a boyfriend who sleeps over most weekends commencing Friday night and leaving Monday morning. The tenant disputes this

evidence. Without further particulars I determined the landlord failed to prove there is an unreasonable number of occupants in the rental unit. Even if the boyfriend is staying over on the weekend in my view he is better classified as a guest and not an occupant. I determined the landlord has failed to establish sufficient grounds to end the tenancy under section 47(1)(c).

The Notice to End Tenancy also relies on section 47(1)(e). The landlord was aware the tenant smokes medical marijuana. They reached an agreement that the tenant would not smoke it in the rental unit but she could smoke it outside. The landlord testified the agreement was that it could be smoked outside after 11:00 p.m. The tenant testified the agreement was that she could smoke it after 10:00 p.m. The landlord testified that in the spring he caught the tenant and a friend smoking in the rental unit.

I determined the landlord does not have sufficient grounds to end the tenancy under section 47(1)(e) of the Residential Tenancy Act. It is not sufficient grounds for the landlord to prove that the tenant engaged in an illegal activity. That section is modified by the three subsections which follow. The landlord failed to establish listed one or more of the subsections below.

As a result I ordered that the one month Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Tenant's claim for Monetary compensation:

The tenant seeks compensation in the sum of \$250 on the based on the landlord reducing access to her parking spot and infringing her privacy. I do not accept the submission of the tenant that the landlord is liable for breach of privacy. The tenant acknowledged she suffers from anxiety and depression issues. On many occasions, the landlord and his wife, acting as good citizens has checked with the tenant to see how see is doing. On many occasions the tenant has been in tears and the landlord

has spent time with her while she is in a distressed condition. The tenant failed to prove the landlord breached her privacy.

The tenant testified the landlord has taken away her parking spot that was originally provided. The landlord has purchased and parked a trailer where she used to park and she has been forced to park on the street. The landlord testified the tenant's vehicle was uninsured for many months and he proposed that she place it in the backyard and therefore not be subject to fines. He testified he is unable to park his vehicle in the backyard as the vehicle is too large. He also testified he has not forced the tenant to park on the street as there is room for 4 vehicles in the parking area. In the circumstances I determined the tenant is entitled to the parking spot that was originally provided and is entitled to compensation in the sum of \$75 for loss of parking spot to the end of December 2014.

#### Application for Repairs

The Application for Dispute Resolution seeks a repair order. In particular the tenant wishes the landlord to repair a broken shower and soap dish. At the hearing the tenant testified she no longer wished this repair as she wants to leave as soon as possible. The landlord stated he wants to gain access to make the repairs to ensure no further damage is caused by leaking water. The landlord has the right to make the repairs upon giving proper notice to the tenant without the need for a repair order.

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: December 08, 2014

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Residential Tenancy Branch

