



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC OPC MND FF O

### Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied to cancel a notice to end tenancy for cause. The landlord applied for an order of possession and a monetary order. The tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

I determined that the issue of the notice to end tenancy took precedence, and only heard evidence on that issue. I will address the remainder of the landlord's application in the conclusion of my decision.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

### Background and Evidence

On October 22, 2014 the parties participated in a hearing pursuant to the tenant's application for repairs and monetary compensation. In the decision dated October 22, 2014, the arbitrator indicated that the landlord failed to provide sufficient evidence to establish that the blockage problems were the fault of the tenant. The landlord ordered the landlord to fix the plumbing system under the sink to avoid any blockage problem. The arbitrator also found that the tenant's enjoyment of the rental unit had been reduced

because of the plumbing and leakage problem, and the tenant was granted monetary compensation of \$250.

On October 30, 2014 the landlord served the tenant with a notice to end tenancy for cause. The notice indicated that the reason for ending the tenancy was that the tenant had caused extraordinary damage to the rental unit or property.

### *Landlord's Evidence*

The landlord stated that the tenant has caused extraordinary damage by clogging the basement kitchen sink with food and other foreign particles.

The landlord stated that shortly after the tenancy commenced, on June 1, 2014, the tenant complained to the landlord that the kitchen sink in the rental unit was not draining. The landlord stated that on two occasions, July 5, 2014 and August 2, 2104, the landlord had professional repairs done to unclog the sink, and on other occasions the landlord did the work. The landlord stated that despite warnings, the tenant continued to put food scraps down the drain, causing it to clog. The landlord stated that one of the plumbers also found a penny in the kitchen sink. The landlord submitted a plumber's invoice dated November 6, 2014, which contains the note, "Do not wash away food in to sink. Use strainers."

### *Tenant's Response*

The tenant submitted that he uses the strainer in the sink, and food particles are not causing the problem. The tenant submitted that there is a plumbing problem in the house. The tenant stated that there is no damage, particularly not extraordinary damage.

### Analysis

The issue of whether or not the tenant was clogging the sink was decided in the hearing on October 22, 2014. The arbitrator found that the tenant was not responsible, and issued an order for the landlord to fix the plumbing problem. As this issue was already decided, I do not have the authority to determine differently.

As the tenant was found not to have caused the sink to clog, the notice to end tenancy is not valid. I cancel the notice to end tenancy dated October 30, 2014.

Conclusion

The landlord's application for an order of possession is dismissed.

The landlord's application for monetary compensation is dismissed with leave to reapply. As set out in the October 22, 2014 decision, it is also open to the tenant to apply for monetary compensation if the landlord has failed to comply with the order to fix the plumbing.

The notice to end tenancy is cancelled, with the effect that the tenancy continues until such time as it ends in accordance with the Act.

The tenant is entitled to recovery of his \$50 filing fee, which he may deduct from his next month's 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: December 10, 2014

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Residential Tenancy Branch

