



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, LAT, MNDC, OPT, RR, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy, declaring a rent increase to be invalid, allowing the tenant to change the locks, compelling the landlord to perform repairs and a monetary order. Both parties participated in the conference call hearing.

### Issues to be Decided

Should the notice to end tenancy be set aside?  
Is the tenant entitled to a monetary order as claimed?  
Has the landlord illegally raised the rent?  
Should the tenant be permitted to change the locks?  
Should the landlord be ordered to perform repairs?

### Background and Evidence

The parties agreed that they signed a tenancy agreement on September 18, 2014 and that the tenancy began on or about October 1, 2014. The tenant claimed that she paid \$850.00 for a security deposit and because she was on income assistance, the Ministry of Social Development (the "Ministry") paid the landlord a further \$600.00. The landlord acknowledged having received \$850.00 but denied having received payment from the Ministry.

The landlord provided a copy of a tenancy agreement signed by the parties showing that the tenant agreed to pay \$1,700.00 per month (the "First Agreement"). The tenant denied having signed this agreement and submitted another tenancy agreement signed by the parties showing that the tenant agreed to pay \$1,200.00 per month (the "Second Agreement"). The landlord acknowledged that she signed the Second Agreement and stated that she did so when the tenant told her that she was on income assistance and

could only afford \$1,200.00 per month. The parties agreed that the tenant told the landlord that she was bringing in a roommate who would enter into a separate tenancy agreement with the landlord to pay the other \$500.00 per month. The landlord claimed that the tenant told her that if her roommate left, the tenant would cover the roommate's share of the rent.

The parties agreed that the roommate was living in the basement of the rental unit and they further agreed that the basement is not a separate, self-contained suite as it does not have a kitchen.

The roommate vacated the rental unit in February and did not pay rent in that month. In March, the tenant began paying \$1,700.00 per month for many of the months thereafter, although her payments were somewhat sporadic. The tenant claimed that she began paying the roommate's rent because the landlord told her she had to. The record of payments from February 2014 – January 2015 is as follows:

Month	Payment by tenant
February	\$1,200
March	\$1,700
April	\$1,700
May	\$1,700
June	\$ 500
July	\$1,700
August	\$2,200
September	0
October	\$1,700
November	\$2,000
December	0
January	0

The tenant claims that she has overpaid the rent and security deposit and did not pay rent in the months of December and January to account for the overpayment. The landlord took the position that the tenant was obligated to pay the full amount of rent under the First Agreement and considered the rent to be in arrears.

The parties agreed that on December 16, the landlord served the tenant with a letter in which she advised that the tenant was in arrears and must either pay the arrears in full or vacate the unit by December 31. This is the only form of notice to end tenancy served by the landlord.

The tenant requested an order that she be permitted to change the locks on the rental unit and not provide a key to the landlord. The tenant testified that the landlord told her that she had been in the rental unit when the tenant was not home. The landlord denied having made that statement or having entered the unit when the tenant was not at home. The parties agreed that when arranging access to the unit for the landlord, the landlord has always contacted the tenant who would arrange a time for the time of entry to occur at a time when the tenant was at home.

The parties agreed that the landlord would perform repairs as outlined in the Analysis section below.

The tenant seeks to recover the \$50.00 filing fee paid to bring her application.

### Analysis

First addressing the letter by which the landlord attempted to end the tenancy, section 52 of the Residential Tenancy Act requires that when a landlord serves a notice to end tenancy, it must be in the approved form, which is a government form available on the Residential Tenancy Branch website. A notice which is not in the approved form is not effective to end the tenancy. I find that the letter served on December 16 is not effective to end the tenancy. If the landlord wishes to end the tenancy, she may serve a legal notice which is in compliance with section 52.

I find that the First Agreement was signed by the tenant. There is no indication that the tenant's signature was forged on that document and I find that the landlord's version of events is more probable than that of the tenant. I find that the parties had in place a binding agreement that the tenant would pay \$1,700.00 per month and that when the parties realized that the tenant's source of income would not accommodate that amount of rent, they entered into the Second Agreement which was made in conjunction with the agreement with the roommate and ensured that the landlord would be receiving the full amount of rent payable under the First Agreement. I find it more likely than not that the tenant agreed to pay the roommate's share of the rent, effectively reverting to the First Agreement, if the roommate did not continue her tenancy. I have arrived at this conclusion because there is no indication that the landlord ever expected to receive just \$1,200.00 in rent for the entire rental unit and cannot rent the basement as a separate unit because it is not a self-contained suite. Further, when the roommate moved out of the unit, the tenant immediately began paying \$1,700.00 in rent and I find it unlikely that she would do so unless she knew she was contractually bound.

I find that the Second Agreement is null and void and that the First Agreement is binding on the parties. The tenant is obligated to pay \$1,700.00 in rent and owes the landlord

\$6,000.00 in rental arrears for the period from February 2014 – January 2015. The landlord is free to serve a 10 day notice to end tenancy for unpaid rent on the tenant should she fail to pay the arrears in full.

The tenant has failed to prove that she overpaid the security deposit. The landlord claimed that she did not receive a cheque from the Ministry and the tenant provided no evidence to corroborate her claim that the Ministry sent the landlord a cheque or that it was negotiated. I find that the landlord currently holds an \$850.00 security deposit from the tenant. The tenant may not apply the security deposit as rent without the written consent of the landlord.

I dismiss the tenant's claim for a monetary order and for an order declaring a rent increase to be invalid as I have found that there was no overpayment of rent or the security deposit and the landlord did not impose a rent increase.

In order for me to permit the tenant to change the locks to the rental unit and withhold a key from the landlord, I must be satisfied that the landlord has defied the restrictions imposed on her by the Act regarding her entry into the rental unit. The tenant's only evidence that the landlord has breached the Act is that the tenant believes the landlord said she entered the unit while the tenant was not there. Since the landlord denies having made that comment and since the tenant has no other reason to believe that the landlord has illegally entered the unit, I find that the tenant has not met her burden of proof and I dismiss her claim for an order allowing her to change the locks.

At the hearing, the parties agreed that the landlord would address the tenant's claim for repairs in the following fashion:

- The landlord will arrange for a repair person to inspect the oven and refrigerator and repair those appliances if required.
- The landlord will arrange for a repair person to inspect the sliding door on the balcony to adjust the door and/or handle to allow it to close and latch properly.
- The landlord will arrange for a third party to care for the lawn.
- The landlord will arrange for someone to inspect the tree which may be touching power lines and remove offending branches if required.
- The landlord will remove or cut back the vines growing on the top of the rental unit.

The tenant also asked that the landlord provide her with a key to the outside door and the door to the garage. The landlord stated that she did not believe she had copies of the keys for those doors. I find that the tenant is entitled to keys for all exterior doors

and I order the landlord to provide keys even if it requires re-keying or replacing the locks.

The landlord testified that she has attempted to perform repairs but could not access the rental unit as the tenant kept telling her that the times the landlord proposed for entry were inconvenient. The landlord has the right to access the rental unit to perform repairs provided she provides 24 hours written notice to the tenant. The tenant does not have to be in the unit when the repairs take place. The landlord does not need to provide notice when accessing the outside of the rental unit. I encourage the parties to work cooperatively to arrange times for repairs to be performed and remind the tenant that she does not have the right to deny the landlord access when the landlord has given her written notice of entry at least 24 hours in advance.

If the tenant's neighbours continue to complain about the condition of the exterior of the home or the yard, I encourage her to refer the neighbours to the landlord who can address their concerns.

As the tenant has been substantially unsuccessful in her claim, I find that she should bear the cost of the filing fee and I decline to order that she recover it from the landlord.

### Conclusion

The notice to end tenancy is invalid and the tenancy will continue. Rent is \$1,700.00 per month and the tenant is currently \$6,000.00 in arrears. The tenant has not overpaid the security deposit. The tenant may not change the locks to the rental unit. The landlord will perform repairs as outlined above.

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: January 19, 2015

---

Residential Tenancy Branch

