



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNL, MNDC, PSF, FF

### **Introduction**

This hearing was convened in response to an application filed by the tenant on February 05, 2015 seeking Orders under the Residential Tenancy Act (the Act) as follows:

- Cancel a Notice to End Tenancy for Landlord's Use of Property dated January 31, 2015 – Section 49
- A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67
- To recover the filing fee from the landlord for this application – Section 72
- Provide services or facilities required by law – Section 65

I accept the tenant's evidence that despite the landlord having been served with the application for dispute resolution, notice of hearing and all evidence provided to this hearing by *registered mail* in accordance with Section 88 and 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant provided evidence of registered mail service to the landlord's address for service, inclusive of the tracking number for the registered mail, which the tenant claims was received by the landlord. The tenant was given full opportunity to be heard, to present evidence and to make submissions.

### **Issue(s) to be Decided**

Is the Notice to End tenancy valid?

Should the landlord's Notice to End be cancelled?

Is the tenant entitled to the monetary amounts claimed?

### **Background and Evidence**

This undisputed testimony of the tenant is that the tenancy started October 01, 2014. The tenant claims they signed a tenancy agreement with the landlord stating that rent of \$1200.00 per month is payable on the first of each month, and that it is inclusive of 'Wi-

Fi' service and parking for 1 vehicle. The tenant provided a signed statement from an agent of the landlord - "the landlord's assistant" ALK - in which they stated the existence of a signed tenancy agreement. The tenant testified that the landlord has, to date refused to provide the tenant with a copy of the tenancy agreement. The tenant claims that on September 14, 2014 they provided the landlord with a cheque for \$1800.00 for a security deposit of \$600.00 and the first month's rent of \$1200.00. The tenant provided a copy of a cleared cheque in this respect made out to the landlord. The tenant claims the landlord cancelled the 'Wi-Fi' service in December 2014. The tenant claims they paid \$40.00 for installation of the service in December 2014 and \$40.00 per month for January and February 2015 for the 'Wi-Fi' service itself.

The tenant further claims the landlord increased the rent by \$100.00 to \$1300.00 per month in the third month of the tenancy – December 2014 – and the tenant paid the increase for December 2014 and January 2015, for which they provided a copy of a cleared cheque in this respect made out to the landlord for December 2014 in support of their claim.

The tenant testified that they disputed the lack of 'Wi-Fi' and the \$100.00 rent increase to the landlord and further requested a copy of the tenancy agreement, to no avail. On January 31, 2015 they received a 2 Month Notice to End Tenancy for Landlord's Use stating the rental unit would be occupied by the landlord pursuant to Section 49(3) of the Act. The tenant disputes the landlord's good faith intention to occupy the unit.

### **Analysis**

Having found that this tenancy is governed by a written tenancy agreement, I find that pursuant to Section 13(3) of the Act the tenant is entitled to a copy of the agreement which should have been provided to the tenant within 21 days of the parties entering into the agreement. As a result, **I Order** the landlord to provide the tenant with a copy of the signed tenancy agreement, forthwith. It must be noted that if the landlord does not provide the tenant with a copy of the tenancy agreement, they may not rely on the contents of that agreement in future matters of the tenancy. **I Order** that if the landlord does not provide the tenant with a copy of the tenancy agreement, the tenant is at liberty to reduce future rent by \$50.00 until the month following the month in which they receive a copy of the tenancy agreement.

On preponderance of the undisputed evidence and on the balance of probabilities, I accept the tenant's evidence they entered into a written tenancy agreement on the terms of \$1200.00 in payable rent per month and that the rent is inclusive of "Wi-Fi" service and parking. As a result, I find the tenant is entitled to recover **\$200.00** in overpayment of rent.

I find the tenant has not provided sufficient evidence to support that they paid \$40.00 for 'Wi-Fi' installation or a total of \$80.00 in 'Wi-Fi' service. As a result, **I dismiss** this portion of their application. None the less, having accepted that the tenancy agreement provides for 'Wi-Fi' service at no additional cost to the tenant, if the parties cannot

resolve this aspect of the tenancy agreement the tenant has leave to seek recovery of "Wi-Fi" costs from March 2015 onward.

As the tenant disputes the good faith intention of the landlord's 2 Month Notice to End Tenancy for Landlord's Use and the landlord did not attend to defend their Notice, I must cancel the Notice. **I Order** the 2 Month Notice to End Tenancy for Landlord's Use dated January 31, 2015 is cancelled and of no effect.

The tenant did not provide evidence respecting their claim for services or facilities required by law. This portion of their application is dismissed, with leave to reapply.

As the tenant has been partially successful in their application they are entitled to recover their filing fee of **\$50.00**.

### **Conclusion**

**I Order** that the Landlord's Notice to End Tenancy for Landlord's Use dated January 31, 2015 is **null and of no effect**.

**I Order** that the tenant's recovery of 2 overpayments of rent, and recovery of the filing fee in the aggregate of **\$250.00**, may be deducted from a future rent.

**I Order** the landlord to provide the tenant with a copy of the tenancy agreement, forthwith. **I Order** that the tenant is at liberty to reduce the monthly payable rent by \$50.00 until the month following the month in which they receive a copy of the tenancy agreement.

The balance of the tenant's application is **dismissed**.

**This Decision and Order is final and binding on both parties.**

*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: February 24, 2015

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Residential Tenancy Branch