



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant for an order cancelling a notice to end tenancy for cause; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The parties both appeared, gave affirmed testimony, and provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other about the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the landlord advised that the tenant's amended application for dispute resolution was received by the landlord on April 21, 2015. The tenant advised that the documentation was sent to the landlord by registered mail on April 15, 2015, which is deemed to have been served 5 days later, or April 20, 2015. The amended application adds the monetary claim as well as the application for an order that the landlord comply with the *Act*, regulation or tenancy agreement. The tenant stated that she did not intend for the monetary claim to be heard at the same time as the application to cancel the notice to end the tenancy, however, the parties agreed to deal with all claims in this hearing. No further issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy given by the landlord was issued in accordance with the *Residential Tenancy Act*?

- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically to make repairs to the rental unit?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of use of a portion of the rental unit and for damages for the landlord's failure to provide the tenant with quiet enjoyment of the rental unit?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on December 1, 2013 and reverted to a month-to-month tenancy after the first year. The tenant still resides in the rental unit. Rent in the amount of \$1,050.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 as well as a pet damage deposit for the tenant's cat, in the amount of \$100.00, and both deposits are still held in trust by the landlord.

The landlord further testified that on March 7, 2015 the tenant was personally served with a 1 Month Notice to End Tenancy for Cause. A copy of the first of 2 pages has been provided. The notice is dated March 5, 2015 and contains an expected date of vacancy of April 30, 2015. The landlord testified that the reason for issuing the notice states: Tenant has engaged in illegal activity that has or is likely to damage the landlord's property; and adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord also issued a 1 Month Notice to End Tenancy for Cause to the tenant by serving it on March 24, 2015 by posting it to the door of the rental unit. Both pages of that notice have been provided and the notice is dated March 22, 2015 and contains an expected date of vacancy of April 30, 2015. The reasons for issuing it as described on page 2 of the notice are:

- Tenant has engaged in illegal activity that has or is likely to:
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord further testified that the parties had attended a dispute resolution hearing on February 27, 2015 and a copy of the resulting Decision has been provided. The tenant was ordered to remove the dogs from the rental unit by March 6, 2015. On March 7, 2015 the landlord's friend advised that the friend saw a dog in the rental unit.

The rental unit is one of 2 homes on the rental property and the other is rented by the landlord's parents. A window of the home rented by the landlord's parents was spray painted with black paint. The tenant had also admitted to the landlord's mother that the tenant's partner had done it. A photograph has been provided.

About an hour after the landlord served the notice to end the tenancy the landlord received an email from the tenant's mother requesting that rent be reduced to \$250.00 per month because of the landlord's neglect to the deck at the rental unit, but the landlord testified that she didn't know there was a problem with the deck, and the landlord did not respond to the email.

During the course of the hearing the landlord orally requested an Order of Possession.

On March 20, 2015 the landlord received a letter from the tenant by registered mail dated March 14, 2015 demanding a reduction in rent and the landlord responded.

The landlord further testified that the deck was repaired in April, 2014 at the rental unit and no notice of any further work required had been received from the tenant. Also, other matters claimed by the tenant were not brought to the landlord's attention.

**The tenant** testified that the landlord's parents had a security camera pointed directly at the tenant's door filming all comings and goings. The type of camera allows the landlord's mother to review it over her phone through a wireless signal, thus is on the internet. The tenant did not feel it appropriate for the tenant's children to be shown over the internet and is very concerned about the children being at risk. The tenant did not talk to the landlord about it but did mention it to the landlord's parents and they moved one camera slightly. The tenant's partner spray painted the window which caused minimal damage requiring scrubbing only and no lasting damage.

The tenant does not dispute that the tenant was given a week to remove dogs from the rental unit and requested that she be permitted to keep them until March 9, only a few days late. The landlord did not agree, but it was logistically problematic because the tenant was assisting her elderly mother to move, who stayed at the rental unit with the tenant until March 7, 2015 and she had agreed to take the dogs. The tenant tried to comply but had a place for the dogs one day later than ordered.

The tenant also testified that she has been continuously harassed by the landlord. On January 2, 2014 the tenant was at a gathering in Vancouver to discuss the tenant's father's estate when the tenant got a call about rent from the landlord. The tenant deposited the money that evening. On January 3, the tenant called the landlord as was demanded and got a lecture about not paying rent on time. Then on January 27 the tenant got a text message requesting to call the landlord at home at 5:00. The tenant replied saying that she couldn't but would call the following day. The landlord replied that she wanted to talk that day, so the tenant said she would be available at 8:00.

The tenant also got a letter from the landlord's property management company assuming management of the rental unit dated January 29, 2014 reminding the tenant about paying rent on time, then another about a routine inspection to take place on February 3, 2014. The tenant wanted to make the landlord aware of a few things and agreed to the inspection in order to make the landlord deal with the required repairs. However, after the inspection, the tenant received a letter from the property management company and a Notice of Entry, which was the first indication to the tenant that the dogs were an issue. The tenant has also provided letters and notices to enter from the property management company, as well as a letter from the landlord. The tenant claims that the landlord and the landlord's property management company have denied the tenant her right to quiet enjoyment as a result of the on-going harassment. Copies of the notices and letters have been provided.

The tenant also testified that the landlord misrepresented the extent of water in the basement by telling the tenant that it accumulates about an inch in some areas. On December 9, 2014 the basement filled with water to about 3 inches which turned off the pilot light for the hot water tank. The tenant got a pump and pumped it out. The tenant didn't call the landlord, but borrowed the pump and didn't incur any cost.

Further, the deck has soft spots. In April, 2014 the landlord provided 3 ½ sheets of ¼ inch plywood, and the landlord's father and tenant's partner screwed them down onto the deck. It was not a good repair job and the tenant's mother fell through a soft spot in the deck in February, 2015 because it had disintegrated. It was a temporary fix only and the deck is still unusable. Also, some character window panes have cracks.

The tenant claims \$3,500.00 in damages for the landlord's failure to provide the tenant with quiet enjoyment of the rental unit and for the landlord's failure to deal with maintenance of the rental unit. The tenant also seeks an order that the landlord make repairs in a timely fashion.

### Analysis

Firstly, with respect to the 1 Month Notice to End Tenancy for Cause, where a tenant disputes such a notice, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. I also accept the undisputed testimony of the landlord that the notice was served on March 24, 2015 by posting it to the door of the rental unit, which I find is deemed to have been served on March 27, 2015. I also accept that the Tenant's Application for Dispute Resolution applies to that notice.

With respect to the reasons for issuing it, I have read the material, and specifically the Decision of the director dated February 27, 2015. The tenant has admitted that the dogs remained in the rental unit a day longer than permitted by the Arbitrator who determined that case. The landlord does not need to prove that there was no inconvenience or damage caused by the tenant's failure to comply with the previous order, the landlord need only prove that the tenant failed to comply with it, and I so find. Therefore I find that the landlord had cause to issue the notice, and the tenant's application to cancel it is hereby dismissed. The landlord orally requested an Order of Possession and the *Act* states that where a landlord does so during a hearing on a tenant's application to cancel a notice, I must issue it. The landlord will have an Order of Possession effective April 30, 2015 at 1:00 p.m.

With respect to the tenant's application for a monetary order, in order to be successful, the onus is on the tenant to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the landlord's failure to comply with the *Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the tenant made to mitigate, or reduce the damage or loss suffered.

In this case, the tenant claims \$3,500.00 for on-going harassment by the landlord and the landlord's property management company which has denied the tenant her right to quiet enjoyment, and for loss of use of the deck due to the landlord's failure to maintain the rental unit, and which has resulted in a devaluation of the tenancy.

I accept that in April, 2014 the deck was repaired with plywood screwed down onto the existing deck and that the repair was a temporary fix. I have read the evidentiary material, and I am satisfied that the tenant made the landlord aware of the issues in a letter dated March 14, 2015 wherein the tenant demands a rent reduction by \$250.00 per month for that repair and other maintenance. The parties also exchanged emails. The tenant has not provided any evidence with respect to the size of the deck or how

much use it would normally have, but I am satisfied that the tenancy has been devalued by some amount which commenced in February, 2015. The landlord has not repaired the deck and was aware that the repair in April, 2014 was temporary, and I find that the tenancy has been devalued by \$50.00 each month for the months of February, 2015 to April 30, 2015, for a total of \$150.00.

With respect to the tenant's claim that the landlord has denied the tenant her right to quiet enjoyment of the rental unit, a landlord is entitled to give notices to tenants and to protect property. One method a landlord has to do so, is to inspect the rental unit which requires the landlord to give notices to the tenant. The tenant may not agree with them, but that does not constitute, in itself, any loss of quiet enjoyment unless it is continued and shown to intimidate or harass the tenant. I have read the documents, and I find that the landlord's property management company introduced itself in a letter of January 29, 2014 and gave notice to conduct a routine building inspection on February 3, 2014, which resulted in a letter to the tenant on February 5, 2014 about the number of occupants, pets and an odor of cigarette smoke, with a notice of entry for another routine building inspection on February 21, 2014. The letter also states that the newer notice to enter is to ensure compliance with the issues of occupants, pets and an odor of cigarette smoke. I don't find that to be a routine building inspection, and the *Act* states that a landlord may inspect a rental unit monthly. The February 21, 2014 inspection resulted in a letter to the tenant dated February 26, 2014 respecting the dogs and another notice to enter to inspect the rental unit to ensure compliance.

The *Act* specifically addresses a tenant's right to quiet enjoyment:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In order to be successful, the tenant would have to establish that the landlord's actions amount to unreasonable disturbance or significant interference. Although I find that the landlord inspected the rental unit more than once in a month, I am not satisfied that it

was done to intimidate or harass the tenant, and therefore has not denied the tenant any right to quiet enjoyment.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for cause is hereby dismissed.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective April 30, 2015 at 1:00 p.m.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$200.00.

This order is final and binding and may be enforced.

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: April 23, 2015

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Residential Tenancy Branch

