



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

For the tenant – DRI, CNC, MNDC, OLC, FF, O

For the landlord – OPR, OPB, MND, MNR, MNSD, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to dispute an additional rent increase, to cancel a One Month Notice to End Tenancy for cause; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlords to comply with the *Act*, regulations or tenancy agreement; other issues; and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order of Possession for unpaid rent or utilities; For an Order of Possession because the tenant breached an agreement with the landlords; for a Monetary Order for damage to the unit, site or property; for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant, the tenant's advocate and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the parties’ application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenant’s application to cancel the One Month Notice to End Tenancy for cause. The tenant has withdrawn his application to dispute an additional rent increase as it was not a valid and legal Notice. I will deal with the landlords’ application for an Order of Possession for unpaid rent, an Order of Possession use the tenant has breached an agreement with the landlord and for a Monetary Order for unpaid rent.

The remaining sections of each party’s respective claims are severed at this time.

### Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?
- Are the landlords entitled to an Order of Possession for unpaid rent or utilities?
- Are the landlords entitled to an Order of Possession because the tenant has breached an agreement with the landlords?
- Are the landlords entitled to a Monetary Order for unpaid rent?

### Background and Evidence

The parties agreed that this month to month tenancy started on June 01, 2014. The tenant rents a room in this property and has shared use of the common areas. The tenant was renting a room in the basement area and has since moved to a different room upstairs. The tenant's rent was \$499.00 and this has been reduced to \$485.00 for the upstairs room. Rent is due on the last day of each month in advance. The tenant paid a security deposit of \$250.00 on June 09, 2014.

### **The landlords' application**

RC testified that the tenant was served with a 10 Day Notice to End Tenancy in person on March 25, 2015. This Notice indicated that the tenant owed rent in the form of late fees for \$100.00. A second 10 Day Notice was served to the tenant on April 01, 2015 in person. This Notice indicated that rent of \$485.00 was outstanding that was due on March 31, 2015 for the month of April.

The landlords agreed that the tenant paid this rent on April 02, 2015 and the 10 Day Notice is null in void.

RC testified that the tenant has breached numerous sections of the agreement. Seven breach letters have been sent to the tenant between August 18, 2014 and March 17, 2015. These breach letters have been provided in documentary evidence. RC testified that the tenant has breached the addendum to the tenancy agreement by leaving the gate and back door unlocked; the tenant has not kept the house clean and orderly when he was the only tenant living in the basement areas at the time; the tenant did not pay rent on the day it was due for September, October, November and December, 2014; the tenant left the gate unlocked again; the tenant failed to pay rent on time in February; the guests of the tenant have been smoking in the house. Neither tenant living in the house smoked at that time and RC does not recall seeing the other tenant have guests in the house; breach letter sent concerning late fees for rent.

Based on these breaches, the landlords request an Order of Possession effective as soon as possible. The landlords also seek to recover their filing fee of \$100.00.

The tenant testified that he did not apply to dispute the 10 Day Notice as he had paid his rent within the five days allowed under the *Act*. The tenant testified that the *Act* allows the tenant up to five days to pay his rent.

The tenant disputed the breach letters provided by the landlords. The tenant testified that on August 18, 2014 he was not the only tenant residing in the house and this house is shared accommodation. The landlords cannot therefore hold the tenant responsible for leaving the gate or the door unlocked and the landlords have no evidence that the tenant is responsible for leaving these unlocked. Since the other tenant moved out the gate and door have always been locked.

The tenant agreed that when he got the breach letter on December 07, 2014 the basement area of the house was fairly messy. The tenant testified that the landlords cannot impose rules about how a tenant can live in a rental unit. When the tenant moved upstairs the basement area was all clean and the landlords did an inspection of that area.

The tenant testified that when he got the breach letter on December 11, 2014, the rent had been paid on the 1<sup>st</sup> of the month. The tenant testified that on December 11, 2014 he received a second breach letter about the gate being left open and again he was not the only tenant living in the house so the landlords cannot say the tenant is responsible for this breach.

The breach letter received on February 20, 2015 concerning late fees is a reminder letter not a breach letter. The breach letter received March 10, 2015 is incorrect. The tenant testified that neither he nor his guests have smoked in the house. There was another tenant living there at the time. The tenant's advocate states that the smell of

smoke can last for several days and it could have been a guest of the other tenant. The landlord has no evidence that the tenant or his guests have smoked in the unit.

The tenant testified that the breach letter received on March 17, 2015 is again concerning the late fees and the 10 Day Notice served upon the tenant for late fees. The tenant disputed the landlords' application for an Order of Possession because the tenant breached the agreement.

The landlord testified that the other tenant living in the unit did not smoke. When EZ showed the house to a potential tenant there was smoke in the house. That potential tenant had an allergy to cigarette smoke and EZ saw ash in the house.

The parties decline to cross examine the other party.

### **The tenant's application**

The landlords testified that the tenant was served with a One Month Notice to End Tenancy for cause (the Notice) on March 10, 2015. The Notice has an effective date of April 10, 2015 and the landlords amended this to April 30, 2015. The Notice provided the following reasons to end the tenancy:

- 1) *The tenant is repeatedly late paying rent.*
- 2) *The tenant has allowed an unreasonable number of occupants in the unit*
- 3) *The tenant or a person permitted on the residential property by the tenant has*
  - (i) *Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*
- 4) *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has*

*(ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

*(iii) Jeopardized a lawful right or interest of another occupant or the landlord.*

*5) The tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.*

RC testified that rent is due on the last day of each month in advance. The tenant has paid rent on the first of each month for September, October, November and December, 2014 and on April 02, 2015.

RC testified that the tenant has allowed an unreasonable number of occupants in the rental unit when the addendum to the tenancy agreement states that only the tenant may live in the unit. At one time the RCMP had to remove five other people the tenant had allowed to live in the house. The RCMP has repeatedly been called out to remove people from the house. The tenant gave the RCMP a letter in which the tenant gave permission for a female person described as his girlfriends to sleep in the tenant's bedroom. This letter is dated March 15, 2015 and has been provided in evidence. RC testified that the other five people removed from the house by the RCMP had broken into the other bedrooms in the house and slept in the beds in those rooms. RC testified that they live close by and could see people coming and going from the house at all hours yet the tenant works so how did these people gain access to the house.

RC testified that the tenant has significantly interfered with and unreasonable disturbed another occupant and the landlords. RC testified that they received verbal complaints about the tenant from the other tenant living in the unit, about other occupants in the house and about allowing others to smoke in the house. The tenant was spoken to about the other occupants.

RC testified that the tenant has engaged in an illegal activity that has adversely affected the quiet enjoyment of another occupant or the landlords. RC testified that when they carried out an inspection of the house they found some drug paraphernalia such as items used to smoke cocaine, a piece of glass used to cut cocaine on and other illegal drug items indicating drug use by the tenant's guests, the tenant's guests also broke into the other bedrooms and the tenant is responsible for the actions of his guests.

RC testified that the tenant has jeopardized the lawful right and interest of the landlord by allowing these activities to take place. The police are always being called to the house and the landlord provided two police file numbers and testified that the police have now grouped all the file numbers under the same file and there are six police reports in total. The tenant's actions are giving the house a bad name in the neighbourhood and the landlords have to deal with this. Yesterday the fire department had to be called as the fire alarm was going off. When the landlords entered the unit only the basement alarm was going off and the upstairs alarm, although it is linked, did not go off which leads the landlords to suspect it has been tampered with. The landlord saw up to six bikes being repaired in the common area living room and testified that it looks like a bike shop is operating from the living room.

The tenant disputed the landlords' claims. The tenant testified that he was only one day late paying his rent. One of the months the tenant went to the landlords' home to pay the rent but they were not there so the tenant had to pay it the next day. The tenant referred to the rent receipts which shows rent was paid on the first day of each month in 2014 and on April 02, 2015. The landlords did not notify the tenant that rent was late when he paid it and the tenant only got the breach letters much later.

The tenant testified that he has only let one person stay in the rental unit and that is not unreasonable. The tenant testified that no guests have stayed longer than two weeks and the tenant has received no police report stating the police removed five people from the unit or a report accusing them of breaking into the other bedrooms. The tenant

testified that he does have guests stay over from time to time but his girlfriend has her own address and does not live with the tenant.

The tenant's advocate stated that in accordance to the *Act* the landlord may not restrict overnight guests. The term stating that the tenant must be the only person living there is an unconscionable term of the tenancy agreement and has waived the tenant's right to have guests as outlined under the *Act*.

The tenant disputed that he has interfered with or disturbed another occupant or the landlord. The tenant testified that he has always got along with the other tenant and has not been unruly or abusive towards him. The tenant reiterated that he does not smoke.

The tenant testified that there has been no police report or disclosures about drug paraphernalia found in the unit, no evidence that the doors have been broken into and neither the tenant nor his guests use drugs on the property. It is the landlord that enters the unit without proper notice and they could have planted evidence in the unit.

The tenant disputed that the house has a bad name in the neighbourhood. The tenant also disputed the landlords' claims that there are six bikes being repaired in the living room. The tenant agreed that he is repairing his own bike in the living room. This is a pedal bike and the landlords cannot dictate to the tenant what he can and can't do in the common areas.

The tenant testified that he will be paying the late fees to the landlord.

RC testified that she received a complaint from a neighbour yesterday concerning the tenant's behaviour. The complainant informed the landlords that the tenant stood in the driveway in full view of the neighbour's house and children. The tenant pulled out his penis and urinated in a planter. The landlord spoke to the tenant and was told to go and 'F' ourselves.



RC asked the tenant how if the tenant works full time are people coming and going from the unit and has the tenant duplicated keys for his girlfriend and she was observed entering the unit and she told the landlords she had a key. The tenant responded that he had given his girlfriend his key. RC asked how the tenant was able to get in when he came home. The tenant responded that they switched keys back and forth and she would leave the door open for the tenant. EZ asked the tenant to explain how the upstairs fire alarm did not go off. The tenant responded that it went off downstairs. EZ asked if the tenant has tampered with the fire alarm. The tenant responded no. EZ asked the tenant if his guests broke into the bedrooms. The tenant responded no. RC asked the tenant to explain why the police took pictures of the broken locks when they removed five people from the house. The tenant responded that he has no knowledge of this and has not seen a police report concerning this.

The landlords provided the police files numbered 2015-13475 and 2015-13635.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the 10 Day Notice to End Tenancy for unpaid rent dated March 25, 2015. As this Notice was served due to unpaid late fees; I cannot consider late fees as unpaid rent, therefore I find that Notice has no force and effect as there was no outstanding rent at the time the Notice was issued. This section of the landlords' claim is dismissed.

With regard to the landlords' application for an Order of Possession for unpaid rent and for a Monetary Order to recover unpaid rent; as the rent for April was paid within the five allowable days this effectively makes the 10 Day Notice issued on April 02, 2015 null in void. Therefore the landlords claim for a Monetary Order for unpaid rent and an Order of Possession based on the April 02, 2015 Notice is dismissed.

With regard to the landlords' claim for an Order of Possession for breach of an agreement with the landlord; the landlord has provided a number of breach letters and the tenant has disputed these. I find some of the terms of the addendum to the tenancy agreement to be unenforceable without clear evidence that the tenant was the tenant breaching the agreement. The landlord has insufficient evidence to show it was the tenant who left the gate and door unlocked. As another tenant resided in the house at that time it could have equally been either tenant that did not lock the gate or the door.

With regard to the tenant keeping the house clean and orderly; I refer the parties to s. 32(2) of the *Act* which states:

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

The landlords have testified that the basement area was disgustingly filthy; the tenant testified it was fairly messy. There is a difference between an area being filthy and being messy. The landlord has the burden of proof in this matter to show the area of the house used by the tenant was disgustingly filthy in breach of s. 32 of the *Act*. The landlord would need to provide some corroborating evidence to support their claim or it becomes one person's word against that of the other and the burden of proof is not met. I have insufficient evidence to show the tenant breached s. 32 of the *Act* in this matter.

Regarding the breach letter concerning late payment of rent; I find the tenant agreed he paid rent late on more than one occasion. The tenancy agreement clearly states that rent is due on the last day of each month. The tenant has failed to abide by this term of the tenancy agreement and therefore is in breach of the agreement by paying rent on the first or second of the month. The *Act* does not provide a leeway of five days each month for a tenant to pay the rent. This only applies when the tenants have been served with a 10 Day Notice to End Tenancy. I therefore uphold this section of the landlords' claim as a breach of the tenancy agreement.

With regard to the breach letter concerning smoking in the house; the landlords have the burden of proof to show the tenant or his guests smoked inside the house. If the landlords can prove this claim then it would be a breach of the tenancy agreement addendum. As there were two tenants residing in the rental unit around this time, the landlords have not shown that the person or persons smoking in the unit were the tenant or his guests. Therefore, the landlords have not met the burden of proof in this matter.

Regarding the breach letter concerning the late fees and 10 Day Notice; the addendum to the tenancy agreement does state that the landlord will impose a \$25.00 fee for each month rent is late, the tenant did not pay the late fees as previously notified; I therefore find the tenant has breached this term of the tenancy agreement. A landlord is entitled to charge a tenant late fees and I refer the parties to the Residential Tenancy Regulations s. 7(1)(d) and s. 7(2)(e) which states:

*7 (1) A landlord may charge any of the following non-refundable fees:*

*(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;*

*(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.*

As I have found the tenant has breached two sections of the tenancy agreement I find although these are relatively minor, the landlords are entitled to an Order of Possession.

When taking these breaches in context with the One Month Notice to End Tenancy, I am satisfied that the tenant has been repeatedly late paying rent. Based on this alone I find the landlords would be entitled to enforcement of the One Month Notice.

I have insufficient evidence to show that the tenant has allowed other people to live in the rental unit. The tenant is entitled to have guests in the unit as long as these guests do not actually move into the unit and the term of the tenancy agreement restricting the tenant from having guests is an unconscionable term of the tenancy agreement.

The landlords have insufficient evidence to meet the burden of proof that the tenant allowed his guests to break into the other bedrooms and while I am satisfied that the police have been called out a number of times to the house the landlords have failed to provide any police reports in documentary evidence to determine the reason the police were in attendance.

The landlords have insufficient evidence to show that the tenant or the tenant's guests have unreasonably interfered with or disturbed other occupants and no witnesses have been called to provide sworn testimony or submit to cross examination to meet the burden of proof in this matter.

The landlords have provided insufficient evidence to support their claim that the tenant or a guest of the tenants has used the rental unit for an illegal activity involving drugs or that the rental house has been given a bad name in the neighborhood. The landlord has insufficient evidence that the tenant is running a bike shop out of the living room of the house and is not simply mending his own bike.

The landlord testified that the tenant has seen urinating in a planter. The tenant did not answer this accusation at the hearing; however, I caution the tenant that acts of this nature in a public place that may be seen by others, particularly children, could be construed as an illegal activity and the tenant must desist from exhibiting any such behavior.

Consequently, I find the only reason given on the Notice where the landlords have sufficient cause to end the tenancy is the late payment of rent. Three late payments are the minimum number sufficient to justify a Notice under these provisions. As the

landlords have sufficient evidence to show rent has been paid late on six occasions then this is cause to end the tenancy pursuant to s. 47(1)(b) of the *Act*. The tenant's application to cancel the One Month Notice is therefore dismissed. The tenant must bare the cost of filing his own application.

As the landlords' application has some merit the landlords are entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*. The landlords may deduct this amount from the tenant's security deposit of \$250.00 held in trust by the landlords. The balance of \$150.00 must either be returned to the tenant or dealt with under s. 38 of the *Act*.

### Conclusion

The landlords' application for an Order of Possession based on either of the 10 Day Notices dated March 25, 2015 and April 01, 2015 are dismissed without leave to reapply.

The landlords' application for a Monetary Order for unpaid rent is dismissed without leave to reapply.

The landlords' application for a Monetary Order for damage to the unit, site or property; for money owed or compensation for damage or loss; and for an Order permitting the landlord to keep the balance of the security deposit are dismissed with leave to reapply.

The landlords' application for an Order of Possession based on the tenant's breach of the tenancy agreement is upheld. I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on the tenant. This Order must be served on the Respondent. If the Respondent fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

The tenant's application to cancel the One Month Notice to End Tenancy for cause dated March 10, 2015 is dismissed without leave to reapply.

As the tenancy will end, the tenant's application for an Order for the landlord to comply with the *Act* will be dismissed without leave to reapply.

The tenant's application for a Monetary Order for money owed or compensation for damage or loss is dismissed with leave to reapply.

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 30, 2015

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Residential Tenancy Branch

