



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FF, MND, MNDC, MNSD, OPC, CNC, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Notice to End Tenancy was personally served on the Tenant on April 27, 2015. I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on April 28, 2015. I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the tenant on June 2, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated April 27, 2015?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to an Order for Possession?
- d. Whether the landlord is entitled to a monetary order and if so how much?

- e. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- f. Whether the landlord is entitled to recover the cost of the filing fee?

### Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on September 1, 2014 and continue on a month to month basis. The tenancy agreement provided that the tenant(s) would pay rent of \$2200 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1100 at the start of the tenancy. The landlord testified that prior to the start of the tenancy the tenant indicated they were interested in a short term tenancy as they were looking to purchase. The landlord also indicated he intended to sell and he also was looking for a short term tenancy. .

The parties conducted a condition inspection on September 1, 2014 and the report indicates the rental unit was for the most part in good condition. The rental property was constructed in 2001. The landlord purchased the property in 2006.

On March 8, 2015 the landlord e-mailed the tenant advising her of his plans to sell the property but stating he would give proper notice. The tenant responded saying she was out of town until March 23, 2015.

On March 31, 2015 the landlord entered into a multiple listing agreement with Witness 1 to sell the rental unit.

On April 5, 2015 the landlord e-mailed the tenant requesting to met with her the next day to discuss terminating the tenancy agreement on May 31, 2015. The meeting was held. The tenant was not willing to vacate at that time stating that her daughter was still in school.

On April 8, 2015 the landlord gave the tenant a letter dated giving her the following options:

- Asking the tenant pay the normal market rate (would result in an increase of \$200 per month for March and April and \$300 per month for May and June) or
- Vacate the rental unit by April 30, 2015 to enable the landlord to professionally clean and stage the property for an immediate sale.

On April 7, 2015 the tenant's agent (a real estate agent by profession) contacted the landlord's real estate agent demanding that she cancel the listing and stating the tenant would not cooperate showing the rental unit.

There was an exchange of e-mails between the landlord and the tenant's husband where the tenant's husband stated he was out of town, moving by the end of April was not possible, questioning whether the landlord could raise the rent as he stated in his letter and asking that the landlord show the rental unit after his wife had left the rental unit.

On April 19, 2015 the landlord gave the tenant an e-mail that states that the landlord, through its agents need access to the property for the purpose of inspecting the property and introducing potential buyers. The notice stated they would be accessing the property on Wednesday, April 22, 2015 between 7:00 p.m. to 7:30 p.m. The parties subsequently agreed the landlord would have access in the morning of that day.

On April 21, 2015 the landlord gave the tenant a warning letter that attached section 29 of the Residential Tenancy Act that deals with access to the rental unit. The letter states that the tenant's consistent denial of access to the property has caused financial damages and warning that the residential tenancy agreement is governed by section 29 of the Act and that the tenant cannot deny reasonable access.

On April 21, 2015 the landlord gave the tenant a second letter that stated that the landlord through its agents will access the property for the purpose of introducing potential buyers to the referenced property on Saturday, April 25, 2015 from 2:00 p.m. to 3:00 p.m.

The landlord's real estate agent attended to the rental unit on April 25, 2015. I determined the tenant was home but failed to answer the door. I determined the tenant refused to give the landlord access. The real estate agent waited the full hour.

The landlord produced photographs alleging damage to the floor, ceiling and carpet. At the hearing he testified it would cost \$800 to repair. After the hearing he sent in a quotation indicating it would cost \$1150. The tenant disputes this claim of the landlord.

The landlord produced a contract of purchase and sale in which a third party made a conditional offer to the landlord for the purchase of the rental property. The landlord did not sign that document. The evidence of the real estate agent was that she hoped to get a higher offer at the open house.

The landlord and landlord's Witness #1 agreed to cancel the multiple listing agreement on May 27, 2015 on the basis that the real estate agent could not show the rental unit.

On May 26, 2015 the real estate agent wrote the landlord asking him to reimburse her out of pocket expense in the sum of \$800. The landlord also testified the monthly cost including mortgage, property taxes, strata fees and special levy is \$3240.

Tenant's Application:

The tenant seeks an order cancelling the one month Notice to End Tenancy. The grounds of the Notice are as follows:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(f) the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so

### Analysis:

I determined the landlord failed to prove that the tenant has caused extraordinary damage. The tenant disputes they caused the alleged damage. The pre-tenancy condition inspection report indicates the hardwood floor is “good with some wear and tear.” The alleged damage to the roof is not in an area that the tenant would normally damage the rental unit. The carpet is approximately 15 years old and past the normal life of a carpet. I determined that the cost to repair is not extraordinary damage even if the landlord could prove the tenant was responsible and it cost to repair is \$1150 to repair.

Section 29 of the Residential Tenancy Act sets out the landlord’s right of access subject to the obligation to give reasonable notice. The Act does not require that the tenant agree to the access. I determined the tenant breached section 29 of the Act by refusing to give the landlord’s real estate access on April 25, 2015 as proper notice had been given.. I do not accept the tenant’s testimony that she was ill. The first time that explanation came up was at the hearing and it is not mentioned in any of the e-mails. However, for a landlord to succeed in ending the tenancy the landlord must give the tenant a reasonable time to correct the situation after giving the tenant written notice to do so. The closest thing to a breach letter is the landlord’s warning letter of April 21, 2015 in which he enclosing a copy of section 29 of the Act. In my view this and other e-mails do not amount to a breach letter. The letter advises the tenants of the provisions of section 29 of the Act but it does not clearly state what the landlord alleges is a breach

of a material term and does not give the tenant an opportunity to correct the situation within a reasonable time. It also does not tell the tenant the consequences of the breach as one would normally expect with such a letter..

#### Determination and Orders:29

After carefully considering all of the evidence I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I order that the one month Notice to End Tenancy dated April 27, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I dismissed the tenant's application to recover the cost of the filing fee as I determined the tenant disintitiled herself to this by failing to follow the provisions of section 29 of the Act.

#### Landlord's Application - Order for Possession:

I dismissed the landlord's application for an Order for Possession as the Notice to End Tenancy has been cancelled.

#### Monetary Order and Cost of Filing fee

With respect to each of the landlord's claims I find as follows:

- a. I dismissed the landlord's claim of \$10,000 for loss of sale. The offer made by the prospective purchaser was conditional. There is insufficient evidence to conclude that he could have fulfilled those conditions. Further, the landlord did not sign the offer and there was no binding contract. Further, even if the landlord had entered into an unconditional contract with the prospective purchaser, the landlord would have to serve a 2 month Notice to End on the tenants and the earliest the landlord could have gained possession was the end of June. Finally, the tenant's application to cancel the one month Notice to End Tenancy was upheld.
- b. I am sympathetic to the landlord's claims arising out of failure of the tenant to give the landlord access to the rental unit on April 25, 2015 including the following:

- Cost of staging - \$630.
- Photography and Videography - \$110.25
- Photocopier - \$7.62
- Office work and helper - \$150
- Real Estate Board – Multiple Listing - \$216.54.

However, while the agent has asked the landlord to reimburse her for her out of pocket expenses the landlord has not made the payment. Further, the landlord failed to establish that he had a legal obligation to make this payment. The cost of staging and photography will not be lost as the landlord will continue to attempt to sell the rental unit. Further, the real estate agent's claim for use of the Multiple Listing service with respect to this file is \$35 and not the amount claimed. .

In summary I determined the landlord failed to establish a monetary claim and accordingly this claim is dismissed.

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: June 12, 2015

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Residential Tenancy Branch

