



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, PSF, AAT, O, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated April 28, 2015 ("1 Month Notice"), pursuant to section 47;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order to the landlord to provide services or facilities required by law, pursuant to section 65;
- an order to allow access to or from the rental unit for the tenant or the tenant's guests, pursuant to section 70;
- other unspecified remedies;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord ("landlord") and her agent husband, PB ("landlord's agent") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. The tenant's mother, DS ("witness DS") provided limited witness testimony at this hearing, as she had to disconnect early due to another commitment. The landlord confirmed that her agent had authority to speak on her behalf at this hearing, as the landlord had to disconnect from the hearing early, due to a work meeting. This hearing lasted approximately 137 minutes in order to allow both parties, particularly the tenant, to fully present all of their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The tenant confirmed that he served the landlord with digital USB evidence on June 2, 2015, by way of registered mail. The landlord confirmed that she received this digital evidence on June 9, 2015, less than 14 days before this hearing and in violation of Rule 3.14 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. However, the landlord consented to proceeding with the hearing on the basis of me considering this digital evidence for this hearing and in my decision. The landlord indicated that she had a chance to review this digital evidence prior to this hearing. Accordingly, I find that the landlord was duly served with the tenant's digital evidence and based on her consent, I proceeded with the hearing and I have considered this digital evidence in my decision.

The tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's written evidence package.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on April 28, 2015. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on April 28, 2015.

#### Preliminary Issue – Jurisdiction to hear Application

At the outset of the hearing, the landlord raised a question as to whether I have jurisdiction to hear this matter. The landlord indicated that the tenant is an occupant, not a tenant, and that the occupant has no rights under the *Act* or the tenancy agreement. The landlord stated that she herself is renting the rental unit from another landlord ("owner") and that she has rented out this unit to the tenant. The landlord noted that this is not a sublease because the tenant did not sign a tenancy agreement with the owner. The landlord also testified that this arrangement was intended to be a temporary allowance for the tenant to occupy restricted areas of the rental unit: one room in a two-bedroom apartment as well as common areas. The landlord indicated that because the tenant did not have full use of the entire rental unit in a tenancy arrangement with the landlord, that this was not intended to be a tenancy or a sublease.

The landlord's agent cited three previous decisions made by other arbitrators, but did not produce a copy of these decisions for this hearing. The landlord indicated that in one of the decisions, the arbitrator found that an agreement was established between roommates rather than tenants, that the person was an occupant and that the

arrangement was for the occupant to move into the unit and share the rent. In another decision, the landlord testified that the arbitrator found that no sublease was created, that the person was an occupant rather than a tenant, that the occupant had restricted access to areas except common areas and that there was no written permission from the landlord to sublet the unit as required by the *Act*. In the last decision, the landlord stated that the arbitrator held that the person was not a tenant and was simply there to share the rent and occupy the unit, that unless all parties agree in writing to enter into a tenancy, one is not created, and that a sublease is a reversionary interest.

The tenant testified that I have jurisdiction to hear this matter and that the *Act* applies because this is a true sublease tenancy. The tenant indicated that he signed a separate tenancy agreement with the landlord on a standard RTB form. He noted that both parties knowingly and voluntarily signed the tenancy agreement and that contrary to the landlord's contentions that the tenant asked for the agreement to be drafted, the landlord drafted the agreement of her own volition. The landlord confirmed that she was not forced to draft or sign the tenancy agreement. The tenant indicated that the rental unit was advertised as a room for rent. The tenant noted that throughout this tenancy, the landlord had never raised a question as to this arrangement not being considered a tenancy and had not indicated that the *Act* might not apply to this tenancy. The tenant stated that this was the first time the landlord raised this jurisdictional question. The tenant indicated that he has access to all areas of the rental unit, including his own bedroom and all common areas. The tenant noted that he was not restricted from entering his roommate's bedroom but that it was "common sense" not to do so out of courtesy to his roommate. The tenant indicated that he has entered his roommate's room on at least two occasions during this tenancy.

Residential Tenancy Policy Guideline 9 states the following, in part, with respect to tenancy agreements and licenses to occupy:

*This Guideline clarifies the factors that distinguish a tenancy agreement from a license to occupy. The definition of "tenancy agreement" in the Residential Tenancy Act includes a license to occupy...*

*A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant...*

*If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest*

*otherwise...In order to determine whether a particular arrangement is a license or tenancy, the arbitrator will consider what the parties intended, and all of the circumstances surrounding the occupation of the premises.*

*Some of the factors that may weigh against finding a tenancy are:*

- *Payment of a security deposit is not required.*
- *The owner, or other person allowing occupancy, retains access to, or control over, portions of the site.*
- *The occupier pays property taxes and utilities but not a fixed amount for rent.*
- *The owner, or other person allowing occupancy, retains the right to enter the site without notice.*
- *The parties have a family or other personal relationship, and occupancy is given because of generosity rather than business considerations.*
- *The parties have agreed that the occupier may be evicted without a reason, or may vacate without notice...*

*The arbitrator will weigh all of the factors for and against finding that a tenancy exists, even where the written contract specifies a license or tenancy agreement. It is also important to note that the passage of time alone will not change the nature of the agreement from license or tenancy.*

As advised to both parties during the hearing, I am not bound by previous decisions made by other arbitrators. However, I have considered the cases referenced by the landlord, prior to making this decision.

As per the above Policy Guideline, the tenant paid a security deposit and rent to the landlord while residing in the rental unit. The tenant has access to all areas of the rental unit and no restriction is placed in the tenancy agreement or another written agreement, regarding his roommate's bedroom. The tenancy agreement provides a term for this tenancy that is specifically defined. Further, the landlord did not attempt to evict the tenant without reason or notice, she specifically provided the 1 Month Notice to the tenant in order to end this tenancy. The 1 Month Notice for Cause is on a standard RTB form, containing specific provisions about this tenancy and the *Act* applying to this tenancy.

I find that both parties intended this to be a tenancy and that the tenant is a true tenant within the meaning of the *Act*, not an occupant. The landlord testified that she had permission from the owner to sublease the rental unit to the tenant, prior to entering into a tenancy agreement with this tenant. Both parties signed a tenancy agreement on a standard RTB form, specifically intending it to be a tenancy and containing specific provisions indicating that the *Act* applies to the tenancy. The tenancy agreement

addendum describes this arrangement as a “tenancy” and indicates the specific periods that the tenant may reside on the property. When questioned as to why the landlord issued two RTB forms, a tenancy agreement and a 1 Month Notice, if she did not intend this to be a tenancy, she indicated that she did it out of precaution, in the event that the *Act* did apply. The landlord stated that she was not aware that she could apply to the RTB, prior to this hearing, for a determination as to whether the *Act* applies to this tenancy.

I find that the conduct of both parties indicates that this is a tenancy, whereby the landlord has sublet the rental unit to the tenant with the permission of the owner. Accordingly, I find that I have jurisdiction to hear this matter and that the *Act* applies to this tenancy.

#### Issues to be Decided

Should the landlord’s 1 Month Notice be cancelled?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to provide services or facilities required by law?

Is the tenant entitled to an order requiring the landlord to allow access to or from the rental unit or site for the tenant or the tenant’s guests?

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to other unspecified remedies?

Is the tenant entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

The landlord testified that this periodic tenancy began on August 22, 2014. Monthly rent in the amount of \$650.00 is payable on the first day of each month. A security deposit of \$325.00 was paid by the tenant and the landlord returned this deposit to the tenant in

April 2015. The rental unit is one bedroom in a two-bedroom apartment, whereby the landlord's son occupies the other bedroom. The landlord lives on a different floor in the same rental building as the tenant.

A written tenancy agreement was provided by the landlord for this hearing. The tenancy agreement indicates that the tenancy is for an "other" periodic term described as "tenancy for duration of [university name] school terms." The tenancy agreement addendum indicates that both parties agree that the "tenancy is for the duration of the [university name] Fall and Winter school terms only. The tenant shall vacate the premises during the Christmas and Summer breaks." Both parties confirmed that the landlord's daughter occupies the rental unit during the above winter and summer breaks, when the tenant vacates the rental unit. The tenant indicated that he left the rental unit around April 29, 2015 because he was served with the 1 Month Notice and because his tenancy agreement addendum required him to vacate the rental unit during the university "summer breaks." The tenant indicated that although he left the rental unit, he intends to return as per his tenancy agreement, during his fall university term starting in September 2015. The tenant stated that he intends to reside at the rental unit until his university studies are complete, which is likely in April 2016, as per his tenancy agreement.

The landlord provided printouts of a number of text messages demonstrating that rent was paid late by the tenant in March, October, November and December 2014, as well as January 2015. The tenant stated that he had an agreement with the landlord to pay rent late in November 2014 and January 2015. The landlord stated that there was only an agreement for the tenant to pay rent late in November 2014, not any other months.

The tenant indicated that his right to quiet enjoyment was breached by the landlord's son, with whom the tenant was living. The tenant stated that the landlord's son had a number of parties between September 2014 and January 2015 in the rental unit and that the tenant's items were damaged or went missing after these parties. The tenant indicated that the rental unit was left in an extremely dirty and unclean state and that he was required to clean up these messes, rather than the landlord's son. The tenant indicated that he was required to clean up in dangerous situations, including broken glass. The tenant stated that the landlord failed in her responsibility to ensure that the tenant's right to quiet enjoyment was not breached, particularly as the landlord's son was entitled to occupy the rental unit with the landlord's permission.

The landlord indicated that her son has been messy and has not cleaned the rental unit on different occasions. The tenant provided text message correspondence from the landlord, indicating that the landlord would personally assist with cleaning the rental unit

and that the landlord would advise her son to clean the rental unit, if it was left in a messy state after her son's parties. The landlord stated that she advised her son not to have parties in the rental unit anymore but to relocate to the landlord's unit for any parties. The tenant agreed that a few days after sending his January 22, 2015 letter to the landlord, regarding his demands and his right to quiet enjoyment, the noisy and loud parties stopped in the rental unit. The tenant stated that the only parties that the landlord's son had in the rental unit thereafter, were quieter and more controlled parties.

The tenant indicated that he had discussions with the landlord and her son on different dates in January, March and April 2015, in order to resolve the issue regarding the landlord's son and his parties. The tenant stated that the landlord harassed him and made insulting remarks towards him. He stated that the landlord threatened to evict him and told him to remove his stuff from storage, when the storage space was included with his rent. The tenant stated that the landlord's behaviour interfered with his quiet enjoyment and his ability to study for school exams.

The tenant did not provide any documentary evidence to demonstrate the cost or value of the items that he said were damaged or went missing as a result of the landlord's son's parties. The tenant stated that only one item was replaced by the female friend of the landlord's son, who is a third party. The tenant's mother provided limited evidence that a few items of the tenant's were damaged, but she indicated that her information came from the tenant, not from her own observations. The landlord indicated that she did not know about these missing and damaged items until the tenant provided her with a letter in January 2015, regarding property damage, personal injury, odor and cleanliness issues. The landlord's agent indicated that an offer was made to the tenant to replace his damaged or missing items but that no response was received from the tenant.

Initially, the tenant indicated that he was seeking \$1,300.00 to replace his laptop computer, which he says was damaged during one of the landlord's son's parties. However, when questioned as to whether he had receipts or other documentary evidence to demonstrate the value of the laptop and when confronted by the landlord as to why he had not claimed for this specific damage prior to this Application, the tenant changed his testimony a number of times. The tenant finally indicated that he was seeking \$1,300.00 as compensation due to harassment from the landlord, not to replace his laptop or any other damaged or missing items.

### Analysis

While I have turned my mind to all the documentary, digital and audio evidence submitted by both parties as well as the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Overall, I found the landlord and her agent to be more credible witnesses than the tenant. I found that witness DS' limited testimony was unhelpful, as it was based mainly on hearsay, to which I afford less weight. I found the tenant changed his testimony repeatedly throughout this hearing in order to tailor his evidence to suit the questions, comments and circumstances that arose at different times throughout the hearing.

### 1 Month Notice and Related Applications

The tenant provided a copy of the 1 Month Notice, which indicates an effective move-out date of June 1, 2015. The landlord cited the following reason for the issuance of the Notice:

- *Tenant is repeatedly late paying rent.*

The tenant received the landlord's 1 Month Notice on April 28, 2015 and filed his application to dispute it on May 2, 2015, within the 10 days permitted under section 47(4) of the *Act*. Accordingly, it is the landlord's burden of proof, on a balance of probabilities, to demonstrate that the notice was issued for a valid reason.

The landlord indicated that rent has been late more than three times during this tenancy. Even if I accept the tenant's evidence that there was an agreement to pay rent late during two of the above five months, the tenant still paid rent late at least 3 times during this tenancy. Although the tenant indicated that he tried to pay rent on time but the landlord was not available when he tried to leave cash or drop it off in person, there is no reference to these attempts in the text message evidence. The tenant indicated that his attempts to pay rent on time were not relevant and therefore he did not feel the need to include this information in his text messages. I think the issue of the tenant's attempts to pay rent on time and the landlord's unavailability or failure to collect this rent, as the tenant claimed, is highly relevant and central to the issue of whether the tenant paid rent on time and therefore, whether the 1 Month Notice was issued for a valid reason.

I accept the landlord's evidence that the tenant paid rent late at least three times during this tenancy. I find that the landlord's 1 Month Notice was issued for a valid reason. Accordingly, I find that this tenancy ended on the effective date indicated on the notice, June 1, 2015. In this case, this required the tenant and anyone on the premises to



vacate the premises by June 1, 2015. If the tenant still has possessions in the rental unit, I order the landlord to provide access to the tenant to remove his possessions. The tenant is to arrange to remove his possessions at his own cost, within 30 days of the date of this decision.

As the tenant has already vacated the rental unit as per the periodic terms of the tenancy agreement and addendum and the landlord did not make an oral request for an order of possession at this hearing, I issue no order of possession to the landlord. If the landlord requires an order of possession, she must make an application for dispute resolution at the RTB. However, as I have determined that this tenancy ended on June 1, 2015, as per the 1 Month Notice, I dismiss the tenant's application to issue an order requiring the landlord to resume this tenancy as per the terms of this periodic tenancy agreement.

I dismiss the tenant's application to cancel the 1 Month Notice. The tenant confirmed that his other applications were related to the 1 Month Notice and whether this tenancy would continue. As I have upheld the landlord's 1 Month Notice, dated April 28, 2015, the tenant's applications for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order requiring the landlord to provide services or facilities required by law, an order requiring the landlord to allow access to or from the rental unit or site for the tenant or the tenant's guests, and other unspecified remedies, are all dismissed without leave to reapply.

### Monetary Order

Section 28 of the *Act* states the following with respect to the 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.*

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay

compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the damage or loss. In this case, the onus is on the tenant to prove, on a balance of probabilities, that the landlord breached his right to quiet enjoyment and caused a loss that is compensable.

To prove a loss the tenant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed damage or loss; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the damage or loss being claimed.

Residing in a rental unit with multiple tenants sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, a landlord must balance her responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*.

On a balance of probabilities, I find that the tenant has failed to demonstrate that a loss of quiet enjoyment exists and that it was caused by the landlord in violation of the *Act*. The tenant did not provide any independent witness testimony or independent documentary evidence to verify that the landlord and her son harassed him. The landlord denied any harassing behaviour towards the tenant and indicated that only discussions took place with the tenant whereby the landlord attempted to resolve the complaints by the tenant. The landlord indicated that discussions between the two parties are not harassment. The tenant did not provide any medical, wage loss or other documentary evidence to indicate that he suffered any medical injuries, missed time off from work or school, or suffered wage loss due to the landlord or her son's behaviour.

Accordingly, I find that the tenant has not met his burden of proof to show that the landlord caused him loss which affected his right to quiet enjoyment, and that the landlord failed to take appropriate action to follow up on the tenant's complaints about the landlord's son. I find that the landlord took appropriate action to address the tenant's complaints. The landlord discussed the issues with her son and future parties,

with the exception of poker parties which the tenant stated were tolerable, were moved to the landlord's rental unit. This was a major concern for the tenant and the tenant had asked for resolution of this issue. The landlord also offered to clean up any remaining messes by her son but resolved many of the cleanliness issues when the parties were moved into her unit. The landlord also stated that she offered to replace the tenant's missing items, many of which were small and inexpensive, but that she did not hear back from the tenant. The tenant was also unable to demonstrate the monetary basis for the \$1,300.00 amount that he claims for this loss. The tenant did not provide any medical, wage loss or other documents to indicate that he suffered a monetary loss.

Therefore, I dismiss the tenant's application for a monetary order for money owed or for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, without leave to reapply.

As the tenant was unsuccessful in his Application, he is not entitled to recover the \$50.00 filing fee from the landlord. The tenant must bear the cost for his own filing fee.

### Conclusion

The tenant's entire application is dismissed without 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: June 19, 2015

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Residential Tenancy Branch

