



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### 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 one month Notice to End Tenancy was sufficiently served on the Tenant on May 7, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord.

### Preliminary Matter:

I ordered that the Application for Dispute Resolution be amended to include the society as an additional respondent.

The landlord testified they had provided the Residential Tenancy Branch with documents and photographs. Those materials have not reached the file. I ordered that the landlord re-submit those documents by Friday, July 10, 2015. The documents were resubmitted and were carefully considered as part the basis for this decision.

### Issue(s) to be Decided:

The issue to be decided is whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 7, 2015?

### Background and Evidence

The tenancy began on March 2, 2015. The present rent is \$375 per month. The tenant(s) paid a security deposit of \$375 at the start of the tenancy.

The landlord seeks to end the tenancy based on the following:

- The tenant is in need of greater care in the form of assisted living which the landlord cannot provide.
- The rental unit was new when the tenant took possession. The landlord testified the tenant must have brought with her bedbugs. The tenant has prevented the landlord from treating the bedbugs in a proper manner thus putting the rental property at risk.
- The tenant has failed to properly care for the rental unit and it is uninhabitable. Landlord's Witness 1 testified she had not go to her doctor after spending a period of time in the rental unit.
- The tenant has attempted to treat the bedbug problem and there is a layer of chemicals on the floor.
- The tenant has vandalized the rental unit and there is damage to the oven door and shower head.

The tenant disputes the landlord's evidence and testified as follows:

- She is terminally ill and does not wish to move.
- The landlord failed to properly treat the bedbugs and she has attempted to eradicate them herself.
- The tenant testified she worked with the landlord and the pest control contractor but the landlord failed to do all that was required of them.
- She used a pet friendly treatment.

- She denies vandalizing the rental unit. She slipped in the shower and grabbed the shower head to stop her fall. She does not cook and the damage to the oven door was caused by an employee of the oven who attempted to open it even after being told not to.

Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(e), (f) and (h) of the Residential Tenancy Act. That section provides 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:

...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i) has caused or is likely to cause damage to the landlord's property,

(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) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(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:

The landlord has the burden of proof to establish sufficient cause to end the tenancy on a balance of probabilities. The landlord must first identify the grounds to end the tenancy. The landlord must present sufficient evidence to justify the end of the tenancy based on the grounds set out in the Notice to End Tenancy.

After carefully considering all of the evidence I determined the landlord has failed to establish sufficient grounds to end the tenancy for the following reasons:

- The Notice to End Tenancy alleges the tenant has engaged in an illegal activity under section 47(1)(e). The landlord submitted the illegal activity referred to is that the tenant has vandalized the rental unit. I determined the landlord failed to prove the tenant engaged in an illegal activity and failed to prove the tenant vandalized the rental unit. The damage to the shower head was accidental. The damage to the stove door was caused by an employee of the landlord. Thus there is no grounds for ending the tenancy under section 47(1)(e).
- The Notice to End Tenancy alleges there was extraordinary damage under section 47(1)(f) of the Act. The evidence of the landlord falls short of extraordinary damage. The damage to the stove was accidental and caused by the landlord's employee. The efforts to eradicate the bedbugs have not been successful. However, I am not satisfied that the efforts of the tenant to eradicate the problem amounts to extraordinary damage. The landlord failed to present sufficient evidence of value in order for an arbitrator to determine there was extraordinary damage. As a result I determine there was insufficient evidence to establish cause to end the tenancy under section 47(1)(f).
- The Notice to End Tenancy alleges the tenant breached a material term of the tenancy agreement and failed to rectify the situation within a reasonable time after being given written notice to do so under section 47(1)(h). While the landlord has given the tenant 3 warning letters, the letters do not give the tenant a reasonable time to rectify the situation and do not state that that landlord shall take steps to end the tenancy if the tenant does not comply. I determined the landlord failed to establish sufficient grounds to end the tenancy under section 47(1)(h). .

I am sympathetic to the landlord's concerns about the tenant's need of greater assistance than what can be provided by the landlord. However, the tenant does not

want to leave the rental unit. An arbitrator must base his/her decision based on the grounds set out in the Notice to End Tenancy.

Determination and Orders:

As a result I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated May 7, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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: July 11, 2015

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Residential Tenancy Branch

