



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, OLC, RR

### 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 by posting on June 29, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the landlord on July 10, 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 Notice to End Tenancy dated June 29, 2015?
- b. Whether the tenant is entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

The tenancy began on April 1, 2015. The tenancy agreement provided that the tenant(s) would pay rent of \$900 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$450 at the start of the tenancy.

Briefly, the landlord testified as follows:

- The tenant and someone permitted on the property by the tenant have threatened the one of the upstairs tenant and her brother.
- The tenant and one of the upstairs tenants and her brother were engaged in an ongoing dispute that lasted several months. The upstairs tenant and her brother vacated the rental unit at the end of August and have moved back to Ontario.
- The landlord produced the audio recording of the tenant leaving a message with the landlord in which she expressed anger and frustration with the upstairs tenant over leaving lights on. The audio recording indicates the tenant threatened to yell at him (the brother) if he continue to leave the lights on. It also suggests the rugby players “will take care of him” and Mike “is going to come and punch him.”
- The landlord relies on a second audio recording allegedly tapes by the brother of the co-tenant someone threatening him.
- The landlord relies on a third audio recording where the tenant makes a number of complaints about the upstairs tenant and saying she has not been contacted by the police.
- The landlord testified the brother of the upstairs tenant has stated that he was fearful for his life.
- The police were contacted and they investigated. They talked to both sets of tenants. No charges were laid.
- The co-tenant and her brother did not testify at the hearing and is no longer living in the province. The landlord produced a letter allegedly from him but it is not signed.

Witness #1 is one of the upstairs tenants. Briefly she testified as follows:

- Her co-tenant’s brother visited for a short period of time in early May. He returned to live with them in late May or early June. The co-tenant and brother returned to Ontario around August 20, 2015.
- The co-tenant’s brother was worried about his safety and the safety of his dog because of threats made by the tenant and one of her friends..
- The co-tenant and brother vacated the rental unit. She does not feel afraid the tenant will harm her and she has a reasonable relationship with the tenant. She testified it is possible that in the future there could be a problem if a new tenant lived downstairs.

- The landlord often talked to them in during the course of the tenancy about the complaints of the downstairs tenant.

Witness #2 testified as follows:

- She first became involved after receiving a phone call from the tenant listing a number of complaints on her answering machine. Over the course of the next 10 days she attempted to contact the tenant 6 times without the tenant answering.
- On July 10, 2015 she had a discussion with the tenant about problems with the upstairs tenants (stomping, threats etc.) and other problems and she suggested the tenant should put her complaints in writing.

Briefly the tenant testified as follows:

- She talked to the landlord on almost a weekly basis about problems she was having with the upstairs tenants. Those problems include excessive noise, stomping, leaving lights on, leaving lint in the dryer, hammering on the door, dog barking etc. The landlord denies the extent of contact alleged by the tenant.
- During that time period she would have to have the volume of her television on 9 or 10. Now, she can hear her television with the volume set on 4 or 5.
- She testified she let the landlord know about problems starting in the middle of April.
- On one occasion she phoned the landlord and left a message on his machine after the upstairs tenants were banging on her door, flashlights looking through windows, excessive noise and abusive comments.
- The tenant produced a 15 page single spaced typewritten statement setting out complaints on a daily basis. I advised the tenant it this was not evidence until she specifically raised the points she was making at the hearing. This was the only way I could ensure the landlord was aware of the complaints being made against him without making the hearing unduly lengthy. The tenant made only a few references to this statement.

#### Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(d)(ii) 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:

...

(d) the tenant or a person permitted on the residential property by the tenant has

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(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

Analysis:

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

- The co-tenant and her brother did not appear at the hearing and did not give sufficient sworn or solemnly affirmed evidence.
- The landlord produced a letter from the brother. However, it is not signed and little weight can be given to it.
- In the absence of first hand testimony of the upstairs tenants dealing with the conduct in dispute possible to assess whether the conduct of the tenant seriously jeopardized the health or safety of the co-tenant's brother.
- The present tenant who lived in the rental unit during the ongoing dispute testified she gets along well with the tenant and no longer fears for her safety.
- The tenant made inappropriate statements in one of the voice messages. I reviewed content of the audio tape. The tone of the tenant's voice appeared more serious and frustrated rather than threatening. It is worth noting no one charged criminally as a result of these incidents. The landlord testified that the co-tenants brother specifically asks that charges not be laid.
- The landlord alleged the co-tenants brother recorded a friend of the tenant threatening to kill him and his dog. The brother did not testify. The audio recording is of poor quality and I cannot hear what is alleged by the landlord. Little weight can be given to this recording because of the poor quality of the recording and we do not have first hand evidence as to who taped it and when..
- It is clear there was an ongoing dispute between the tenant and the upstairs co-tenant and her brother. Both sides are at fault in how they dealt with each other.

I determined the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated June 29, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Tenant's Application for an order for the reduced value of the tenancy:

The Application for Dispute Resolution filed by the tenant seeks an order allowing the tenant to reduce rent for repairs, services or facilities agreed upon but not provided.

There was a problem with the electrical system for 5 days and the tenant was without power to her bedroom and living room. The tenant seeks compensation of \$137.50 (5 ½ days multiplied by \$25.99 per day). She testified she had to go to a friend's home to be near a phone as well as watching T.V. The tenant failed to explain why she didn't purchase an extension cord as the rest of her rental unit had power. I determined the tenant is entitled to \$50 for this claim.

I determined the tenant is entitled to \$70 for the cost of purchasing ant traps.

The tenant seeks compensation in the sum of \$2400 for breach of the covenant of quiet enjoyment and the reduced value of the tenancy caused by her dispute with the upstairs tenant and her brother.

Section 28 of the Residential Tenancy Act provides as follows:

**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.

Policy Guideline #6 includes the following:

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that

rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission
- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

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A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.

After carefully considering all of the evidence I determined the tenant failed to establish a claim for the reduced value of the rent for breach of the covenant of quiet enjoyment for the following reasons:

- The tenant failed to establish the landlord was responsible for the disturbances that she experienced. The tenant may have had a claim against the upstairs co-tenant and her brother but that claims would have to be brought in Small Claim Court.
- The dispute was ongoing with both parties making complaints against the other.
- The landlord did not stand idly by. I find that the landlord on many occasions talked to the upstairs tenant about the tenant's complaints.

- The major complaint the tenant had was against the co-tenants brother. He was briefly in the upstairs rental unit at the start of May and then left to return to Ontario. He did not return until late May or early June. Even if there was sufficient evidence to end the tenancy, the earliest the landlord could have served the Notice to End Tenancy was in June and this would not be effective until the end of July at the earliest. It would have been longer if the upstairs tenants disputed the Notice to End Tenancy.
- The tenant failed to give the landlord written notice of her complaints.
- I find that as of the end of June there was insufficient evidence in which the landlord would be able to successfully obtain an Order for Possession against the upstairs tenants.
- The landlord cannot be faulted for serving a Notice to Tenancy on the tenant at the end of June. The conduct of the tenant when she made unfortunate remarks in her voice message which could be interpreted as a threat was grounds for concern given the escalating tension between the tenant and the upstairs' co-tenant and her brother. While I have determined the landlord failed to establish sufficient grounds to end the tenancy my decision might very well had been different if the upstairs tenant and her brother testified at the hearing.

As a result I order the tenant's claim of \$2400 for the reduced value of the tenancy be dismissed.

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Summary:

In summary I ordered that the one month Notice to End Tenancy dated June 29, 2015 be cancelled. I ordered that the landlord pay to the tenant the sum of \$120 in compensation of her claim for loss of power and the cost to purchase ant traps such sum may be deducted from future rent.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: September 14, 2015

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Residential Tenancy Branch



