



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            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 one month Notice to End Tenancy was sufficiently served on the Tenant by posting on August 22, 2015. Further 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 carries on business on August 26, 2015.

### 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 August 22, 2015?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on March 1, 1994. The tenant paid a security deposit of \$300 at the start of the tenancy. The present rent is \$923 per month payable in advance on the first day of each month.

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

- On August 22, 2015 the owner asked her to attend to the rental unit to investigate a complaint made by the tenant of a leaky faucet.
- While inspecting the leaky faucet the tenant began harassing her leading to considerably name calling.
- The landlord testified as to how the incident increased in intensity. She acknowledged that she responded to the name calling with name calling of her own.
- The tenant then took her purse and hurled it down the hall.
- The tenant threatened to call the police. The landlord agreed that was appropriate.
- The police investigated and agreed it was a civil matter.
- The landlord testified she felt threatened by the conduct of the tenant. She does all she can to avoid the tenant.
- There has been a previous unpleasant interaction between the landlord and tenant when the tenant was watering plants on her balcony.
- The tenant has slandered her to other tenants and others in the community
- She has been a manager of this building for approximately 4 years.

The tenant responded as follows:

- Her version of the events that occurred on August 22, 2015 was considerable different. She testified that the landlord was the instigator in "chewing her out." She asked the landlord to leave by the landlord refused. She took the landlord's purse and keys and placed them at the end of the hall.
- She testified the landlord is fully aware of the plumbing problem but has refused to fix it. The leaky faucet is the hot water faucet and her rental unit is like a sauna.
- She does not want to fight with the manager. All she wants is for the landlord to fix the leaking faucet.

Grounds for Termination:

The Notice to End Tenancy relies on section 47(1)(d) 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
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

#### Analysis:

The landlord has the burden of proof to establish sufficient cause based on a balance of probabilities. After carefully considering the disputed evidence I determined the landlord has failed to establish sufficient cause to end the tenancy. The incident on August 22, 2015 is unfortunate. Both sides blame the other as to who caused it. The landlord failed to prove the name calling and abuse was caused by the tenant. I am satisfied that the matter escalated because of the conduct of both parties. The landlord remained in the rental unit and continued to engage in the escalating argument. In such a situation I determined the landlord failed to prove the tenant significantly interfered with or unreasonably disturbed the landlord or seriously jeopardized the health or safety or other lawful right or interest of the landlord. I am not satisfied that the tenant's removal of the landlord's belongings amounts to "significant interference" as required by the Ac.

The landlord alleged the tenant has slandered her reputation to others but failed to present evidence to support this allegation. Further she alleged the tenant has harassed others but there is insufficient evidence to support this. I do not give the incident relating to the water of the plant on the balcony much weight as it occurred approximately 3 years ago and did not meet the requirements of section 47(1)(d) to amount to grounds to end the tenancy.

#### Determination and Orders:

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 ordered that the Notice to End Tenancy dated August 22, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. I further order that the landlord pay to the tenant the sum of \$50 for the cost of the filing fee such sum may be deducted from future rent.**

The tenant requested that I order the Landlord to make repairs to the leaky faucet. This was not included in the Application for Dispute Resolution. As a result no such order can be made. The tenant has the right to file an Application for Dispute Resolution seeking such an order should she wish.

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: October 16, 2015

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Residential Tenancy Branch

