



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNR

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order cancelling a One Month Notice to End Tenancy for Cause and for a Monetary Order for the cost of emergency repairs.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord had an agent assisting him and the tenant had an advocate. The parties were given the opportunity to cross examine each other and witnesses on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence.

### Procedural Matter

At the outset of the hearing, the matter of the tenant's evidence was discussed. The tenant's evidence was submitted 13 days prior to the hearing.

In considering Rule 3.14, the tenant as the applicant, must submit their evidence so that it is received by the Residential Tenancy Branch ("RTB") and the other party not less than 14 days prior to the hearing, and in this case, the tenant did not. In considering whether to accept the tenant's evidence, I find that the tenant delayed in sending his evidence; however, I have accepted the portion of the tenant's evidence which was relevant to the findings in this Decision, which are the written tenancy agreement and

the copy of the One Month Notice to End Tenancy. It is noted that the landlord also supplied copies of this evidence. I have excluded the portion of the tenant's evidence that included photographs and information not relevant for consideration in this hearing held today.

I have reviewed all oral and admissible written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

I have determined that the portion of the tenant's application dealing with any claim other than the request seeking cancellation of the One Month Notice to End Tenancy for cause is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules of Procedure, I have severed the tenant's application and dismissed that portion of the tenant's application for a Monetary Order for the cost of emergency repairs, **with leave to reapply**.

### Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Notice to End Tenancy?

### Background and Evidence

The parties agreed that this month to month tenancy started on May 25, 2010. Rent was \$1,200.00 per month but was later reduced to \$1,190.00. Rent is due on the 1<sup>st</sup> of each month.

The landlord testified that the tenant was served a One Month Notice to End Tenancy for Cause (the Notice) on August 17, 2015 by posting the Notice to the door. The Notice

is deemed served on August 20, 2015. The landlord testified that he has provided two reasons to end the tenancy on September 30, 2015 as follows:

- 1) The tenant has caused extraordinary damage to the unit/site or property
- 2) The tenant has assigned or sublet the rental unit without the landlords' written consent

The landlord's agent referred to the landlord's photographic evidence showing the house and yard. The landlord's agent testified that the tenant or his brother has created piles of debris in the yard and there are a number of abandoned vehicles. There is a great deal of damage caused to the outside of the house as shown in the photographic evidence. This consists of the Shaw cable wires having been cut, downpipes ripped off, the deck railing posts are damaged which has compromised the main structure of the sundeck, an outside light fixture has been smashed, a vine lattice has been smashed off the side of the house, the clothes lines anchors and lines have been pulled off the house, the tenant has built an unauthorised structure which is for a chimney for a woodstove the tenant has built in the basement causing a fire risk, window screens have been damaged and general vandalism has been caused to the property.

The landlord testified that the tenant only rented the upper portion of the house as it was the only finished portion. The tenant did not rent the unfinished basement. The tenant has done some unauthorized renovation work in the basement. The tenant moved into the basement after allowing his brother to move into the house and when the two brothers fell out.

The landlord's witness testified that he is a neighbour and another tenant of the landlord. The witness testified that he lives in an adjacent property and personally saw a lot of the damage being done. The witness testified that the tenant's brother suffers with a mental illness and has attacked the witness. The witness has had to deal with people from the mental health team and the RCMP as a result of this concerning the tenant's brother. The witness testified that damage to the property has been caused by both of

the brothers. The witness testified that he has personally witnessed the wires being cut, the downpipes being damaged and the deck railing being smashed with a sledge hammer.

The tenant cross examined the witness and asked what day and time did the witness see the tenant or his brother damaging the house. The witness responded that he has lived there for four years and the last three summers he has seen damage occurring. Some of the damage is done in the middle of the afternoon but the witness did not recall specific dates. The witness testified that he has seen large amounts of debris and materials being brought onto the property by the truck load, even after the landlord has asked the tenant not to bring anymore materials onto the property. The tenant asked the witness if the witness had taken over the main house driveway, laundry and garbage cans. The witness testified that he was told he had use of the driveway and the laundry and garbage cans are shared between both units.

The landlord testified that the tenant allowed his brother to move into the unit without asking permission from the landlord. The landlord testified that this occurred about 18 months ago and the landlord did accept rent from the tenant's brother as he felt he had no choice as he had already moved into the unit. The landlord agreed this is the first One Month Notice he has served upon the tenant about this unauthorised subletting of the unit.

The tenant disputed the landlord's claims that the tenant or his brother has caused damage to the rental unit. The tenant testified that he does not know who caused the damage or who cut the wires and stated that the house is old and rotten in places. The tenant testified he finds it unlikely his brother would have cut the cable wires as his brother wanted cable TV.

The tenant testified that he rented the whole house from the landlord and there is no mention on the tenancy agreement that he only rented the upper portion of the house. The tenant testified that the landlord discussed the renovations in the basement and

told the tenant to go ahead. The landlord even hired some tools for the tenant to do some work.

The tenant testified that a lot of the debris outside is as a result of work done in the house to remove mould and work in the basement and this debris is the landlord's responsibility as it came out of his house. There is also a water tank which was taken out of the house over a year ago and is still outside in the yard. There is an old microwave and beds taken out of the house due to mould and mice infestations. The tenant testified that he cannot put his personal garbage into the garbage cans as the other tenant who is acting as the landlord's witness uses the space in the cans.

The tenant testified that there used to be stairs to the sundeck which were rotten. The landlord told the tenant to remove them. The posts were also rotten. The tenant was going to put new stairs in, but after the disputes happened with the landlord the tenant does not intend to do the stairs. The tenant testified that they did not break the posts with a sledge hammer and he has no idea how the light fixture got broken. The tenant testified that the vine lattice was very old and this just fell apart.

The tenant testified that some of the landlord's pictures show some of the tenant's brother's belongings when he moved into the property. These items are no longer at the front of the house with the expectation of one item which belongs to the tenant. The tenant testified that the box the landlord has shown in his pictures is not a chimney. In this area there was a plate in the ground that caused water to leak into the basement. The box was built to prevent leakages. The landlord was aware of the basement renovations and the tenant has informed the landlord that he would like to put in a chimney and wood stove but this has not yet been done.

The tenant testified that the downspouts are old and fall off easily and they just need to be fixed back on. The tenant agreed that his brother did remove the clothes line anchor as he got upset that the neighbour was using the clothes line and was standing outside the unit. The tenant testified that his brother did make a mess in the yard but this has

been cleared up. The tenant testified that he has also taken some garbage to the dump and the rest is the landlords junk. The tenant testified that he had put up a guard rail on the deck but his brother took that down. The tenant testified that the window screens are probably 60 years old. These have just curled up and have not been damaged by the tenant.

The tenant agreed that he does have unlicensed vehicles on the property. An officer from the City Bylaw Office came by and spoke to the tenant about the vehicles and so the tenant is removing one vehicle from the yard. This will leave the tenant with two hotrods which he will put sitting insurance on and a motor home. The tenant testified that the bylaw officer said the tenant was allowed to have two vehicles.

The tenant testified that the landlord knew the tenant's brother was living in the unit. The landlord had let the tenant have other roommates. The landlord collected rent directly from the tenant's brother and has therefore established a tenancy with the tenant's brother.

The landlord's agent cross examined the tenant and asked if the tenant thought it was fair that the landlord has to avoid vehicles while working in his orchard that are blocking five rows of trees and prevents easy access to the landlord when picking fruit. The tenant responded that five rows are not blocked the landlord still has access to his trees. The landlord's agent asked the tenant if the tenant knew about his brother's fit of rage that caused a lot of the damage on one day when the tenant's brother used a hammer on the property. The tenant responded that he does remember that day; however, his brother broke some of his own stuff and the tenant did not see him break anything else or cut the cables. The landlord's agent asked the tenant if the box built is an extension to the home to vent a wood burning stove. The tenant responded that there are no pipes and no venting. It is just to keep the rain and snow from washing into the house. The landlord's agent asked the tenant why he insulated it. The tenant responded because it is part of the house. The landlord's agent referred the tenant to a letter written by the tenant's former girlfriend who resided in the house with the tenant

and described the house as being in good condition five years ago. The tenant responded that there was black mould in the house that he had to take out.

The landlord testified that he took his photographic evidence in the middle of September, 2015 that shows the condition of the house and yard and how it has deteriorated in five years because of the tenant's actions and neglect. The amount of junk in the yard is enough to have come out of six houses and the tenant brings this to the yard by the truckload. The tenant is supposed to maintain the yard yet the weeds are four feet tall. The landlord testified that just last week the tenant brought in a truck load of junk containing bikes, vehicle parts, building materials and four or five windows.

The tenant agreed that there are some items in the yard which are his but the landlord has not shown any willingness to contribute in removing the junk from the house placed in the yard or to compensate the tenant for his work if he removed it. The tenant testified that the windows he brought in last week were for the renovation. The tenant testified that the landlord was aware of this renovation and helped rent tools to take down a cement wall.

The tenant calls his witness. The witness testified that he was present when the tenant and landlord were talking in the basement. The landlord was being helpful and encouraged the tenant to continue with the renovation saying it looked good. The landlord and tenant were making arrangements to get a plumber in to do the plumbing for a shower and tub. This was around a 18 months to two years ago. The witness testified that the landlord encouraged this tenant and the other tenant to do renovations on the property. The witness testified that the landlord rented a jack hammer and a saw for the tenant to take down the cement wall.

The landlord testified that he has never seen this witness before and asked the witness when he met him. The witness responded that he has met the landlord several times and has even spoken to him about his tractor.

The tenant cross examined the landlord and asked did the landlord get any paperwork from the tenant about repairs needed to the evestrove and roof. The landlord responded that the roofing was only put in in 2006 and did not need repairing. The landlord testified that the tenant treats the landlord's house like a junk yard. The tenant again asked the landlord if he received paperwork dated February 12, 2013 regarding repairs needed to the property. The landlord responded that he took garbage to the dump two years ago when the Bylaw Officer gave the tenant a notice and insisted the garbage be removed due to neighbours' complaints. The landlord testified that if the tenant has caused damage to the property or left junk then it is not the landlord's responsibility to repair it or remove the junk.

The landlord orally requested that the Notice is upheld and seeks an Order of Possession of the residential property.

The tenant seeks to have the Notice cancelled.

### Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

With regard to the reason given on the Notice that the tenant has assigned or sublet the rental unit without the landlord's permission; the tenant has allowed his brother to live in the rental unit. The landlord clearly knew of this arrangement as the landlord accepted rent from the tenant's brother. This does not; however, necessarily establish a tenancy with the tenant's brother but does show that the landlord has continued with this arrangement for over a year and is only now taking steps to use this arrangement to end the tenancy. While I accept the tenant did not get written permission from the landlord to allow his brother to live in the unit the landlord was aware of this situation

and did nothing to remedy it for some time. Consequently, I am not prepared to allow the landlord to end the tenancy because of this arrangement but I do caution the tenant that as the tenancy agreement is between the landlord and the tenant and not the tenant's brother then the tenant is responsible for the actions of any occupants including his brother that he allows to reside in the rental unit.

With regard to the reason on the Notice that the tenant has caused extraordinary damage to the rental unit; the landlord has provided 34 photographs showing the condition of the property and the landlord's witness has testified that he personally saw the tenant and his brother causing some of the damage depicted in these photographs. The landlord testified that he did not give the tenant permission to renovate the basement or build this addition on the house for whatever purpose. The tenant testified that the landlord was aware and even encouraged the tenant to do the renovation and provided tools for some of the work. The tenant's witness corroborates this and testified he was present when the landlord encouraged the tenant to continue with the renovation and hired a jackhammer and saw for the tenant to do this work. In the absence of any corroborating evidence that the landlord was not aware of or encouraged the tenant to do renovation work in the basement I must find the landlord's account to be less than credible concerning the work done by the tenant in the basement.

However, I am satisfied from the landlord's evidence that some extraordinary damage has occurred to the property. The amount of junk around the yard is an amount that could not have accumulated just through a basement renovation and I am satisfied that most of this junk and vehicles are the responsibility of the tenant. Furthermore, I am satisfied that the wires have been cut in what appears to be a malicious manner as numerous cuts have been made. The downspouts are off the eavestoves; while I accept that one or two may fall off over their life time I do not find that these downspouts could all have fallen off which lends me to the conclusion that they have been removed. The light is clearly smashed, the clothes line anchors were removed by the tenant's brother and after closer examination of the photographs showing the railing posts it is clear that

while parts of the posts show some sign of age these photographs do show that at least one has been smashed and broken. The window screens and vine lattice are clearly old and I am unable to determine if these have been broken through the tenants or his brothers' actions or neglect or through normal wear and tear. While the tenant denies all knowledge of the majority of this damage I must find that the tenant's testimony lacks credibility that he has no knowledge of who caused this damage to the property and find that at least some of this damage and neglect was caused by the tenant or the tenant's brother. As the tenant is responsible for the actions of any guests or other occupants of the rental unit I find the tenant must be held responsible for some of this damage and neglect to the house and yard.

Consequently, I must uphold the Notice and therefore I dismiss the tenant's application to cancel the Notice without leave to reapply.

I refer the parties to s. 55(1) of the *Residential Tenancy Act (Act)* which states:

**55** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

- (a) the landlord makes an oral request for an order of possession,*
- and*
- (b) the director dismisses the tenant's application or upholds the landlord's notice.*

The landlord has orally requested an Order of Possession. Having upheld the Notice I will grant that Order. The effective date on the Notice in this matter is September 30, 2015. As that date has since passed, I grant the landlord an Order of Possession effective two days after service on the tenant.

### Conclusion

The tenant's application to cancel the Notice is dismissed without leave to reapply.

The tenant is at liberty to file an application for a Monetary Order for the cost of emergency repairs.

For the reasons set out above I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenant. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme 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: October 26, 2015

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Residential Tenancy Branch

