



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF  
CNC, MNSD, OLC, OPT, PSF, RP, RR, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and for a monetary order for recovery of the filing fee from the tenant for the cost of the application. The tenant has applied for the following relief:

- for an order cancelling a notice to end the tenancy for cause;
- for a monetary order for return of all or part of the pet damage deposit or security deposit;
- for an order that the landlord comply with the *Act* regulation or tenancy agreement;
- for an Order of Possession of the rental unit;
- for an order that the landlord provide services or facilities required by the tenancy agreement or law;
- for an order that the landlord make repairs to the rental unit;
- for an order reducing rent for repairs, services or facilities agreed upon but not provided; and
- to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

At the commencement of the hearing the tenant withdrew the application for a monetary order for return of the pet damage deposit or security deposit.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established that the notice to end the tenancy was issued in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to comply with the *Act* regulation or tenancy agreement, and more particularly provide the tenant with moving expenses?
- Is the tenant entitled under the *Act* to an Order of Possession of the rental unit?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by the tenancy agreement or law?
- Has the tenant established that the landlord should be ordered to make repairs to the rental unit?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

**The landlord** testified that this fixed-term tenancy began on July 1, 2015 and expires on June 30, 2016 after which it becomes a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,850.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. On May 12, 2015 the landlord collected a security deposit from the tenant in the amount of \$925.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a half-duplex, and the landlord's family resides on the other side.

The landlord further testified that on August 12, 2015 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the front door of the rental unit. A copy of the notice has been provided and it is dated August 10, 2015 and contains an effective date of vacancy of September 15, 2015, and the landlord testified that she has since learned that the effective date is incorrect and should read September 30, 2015. The reasons for issuing the notice are:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant's dog starts barking at 5:30 or 6:00 a.m. waking the landlord's family who complained to the landlord. The landlord asked the tenant to remedy it, and no more complaints were received.

The landlord also testified that the tenant seems to be feeding a Farrell cat and as a result of food being left out, rats started to frequent the rental unit. The landlord has been there off and on over 13 years and never saw any rats or evidence of rats. The landlord asked the tenant to remove anything that might attract animals, and the landlord assumes the tenant did so.

Due to these incidents, the landlord asked to meet with the tenant on 2 occasions but the tenant refused. The tenant did not disclose to the landlord that there were pets, and once the landlord discovered that the tenant had a dog and 2 cats, the landlord asked for a pet damage deposit and to discuss issues about pets with the landlord. The tenant refused to meet saying that she was not going to amend the lease in any way.

The landlord also testified that parts for the kitchen range have been on order and due to the remote location of the rental unit it is taking some time to get an appliance repair person. The landlord has taken steps to have it repaired but it is out of her control. Two burners still work, and the landlord called the appliance repair person even before the tenant moved in.

The landlord also testified that the tenant's application seeks window screens to keep pets inside. Some windows have screens, but there were never any on others, and there's no need for them; there are no bugs or mosquitoes around that area.

**The tenant** testified that there is no evidence that the tenant has caused health problems, and has not left any food outside. Further, the tenant was not asked to pay a pet damage deposit. The landlord was in the rental unit and saw the tenant's pets and even expressed sympathy when the tenant lost her cat.

The tenant also testified that the neighbours have a dog that barks. The tenant stopped her dog from barking, but barks when hearing other dogs barking or children next door. The tenant denies any further disturbances have been caused by her dog since the landlord asked the tenant to rectify the situation.

The tenant seeks an order cancelling the notice to end the tenancy for cause and an Order of Possession of the rental unit. The tenant also seeks an order that the landlord comply with the *Act* or the tenancy agreement by paying compensation for moving expenses due to the landlord ending the tenancy earlier than the fixed term.

The tenant also seeks an order that the landlord have the stove repaired and window screens added, and a reduction in rent due to the fact that neither repair has yet been made by the landlord.

### Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act* which can include the reasons for issuing it. I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

The landlord asked the tenant to quiet the dog, and the tenant did so. The landlord also assumes the tenant stopped leaving food outside that may attract pests once asked to, and the tenant denies that she ever did. However, that problem has not persisted, and I cannot find that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

With respect to the other reason for issuing the notice, the *Residential Tenancy Act* states that a landlord may require a pet damage deposit of up to half a month's rent if the tenant acquires a pet during the term of a tenancy, when the landlord agrees that the tenant may keep the pet on the residential property. If the tenant does not pay the pet damage deposit within 30 days of the date it is required, the landlord may end the tenancy. In this case, the tenancy agreement is silent with respect to pets, and I am not satisfied that the landlord agreed that the tenant could have pets. However, the landlord has not given the tenant any amount that the landlord requires. Therefore, I hereby cancel the notice to end the tenancy. The landlord is at liberty to request a specified amount for a pet damage deposit and if the tenant fails to pay that amount within 30 days of such written request, the landlord may choose to end the tenancy.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement by paying moving costs to the tenant, there is no provision for that in the legislation and the tenant's application is dismissed.

Also, the tenant currently has possession of the rental unit by virtue of a tenancy agreement and resides in the rental unit, and therefore, the tenant's application for an Order of Possession is dismissed.

With respect to the tenant's application for an order that the landlord make repairs to the rental unit, the *Act* requires a landlord to provide and maintain the rental unit sufficient to

make it suitable for occupation by a tenant. I am not satisfied that screens are required, and the landlord is taking steps to have the stove repaired. The landlord testified that she took steps even prior to the beginning of the tenancy, however 4 months is excessive even for a remote community. Therefore, I order that the landlord take additional steps to repair or replace the stove by the end of October, 2015.

With respect to the tenant's application for an order reducing rent for repairs, services or facilities agreed upon but not provided, having found that the landlord is not obligated to provide more screens on the windows, I can only find that the stove is the only facility or repair that the tenant has suffered a loss of. The stove is operable with 2 burners instead of the standard 4, and therefore, I order that the tenant be compensated \$25.00 per month from July 1, 2015 to October, 2015, for a total of \$100.00.

I further order that if the stove is not replaced or repaired by October 31, 2015 the tenant will be at liberty to apply for a further reduction in rent.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

I further order that the \$150.00 payable by the landlord to the tenant may be deducted from a future month of rent or otherwise recovered.

### Conclusion

For the reasons set out above, the landlord's application is hereby dismissed.

The 1 Month Notice to End Tenancy for Cause dated August 10, 2015 is hereby cancelled and the tenancy continues.

The tenant's application for an Order of Possession is hereby dismissed.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$150.00. This amount may be deducted from future rent payable under the tenancy agreement, or otherwise recovered.

I hereby order the landlord to ensure the stove in the rental unit is repaired or replaced by October 31, 2015. If the landlord fails to do so, the tenant is at liberty to apply for further compensation.

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 13, 2015

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Residential Tenancy Branch

