



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

ERP, CNC, MNDC, LRE, FF

### Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act ("Act"). The tenants applied for an order requiring the landlord to make emergency repairs to the rental unit, an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause ("Notice"), a monetary order for money owed or compensation for damage or loss under the Act, the tenancy agreement or the regulation, an order suspending or setting conditions on the landlord's right to enter the rental unit, and for recovery of the filing fee paid for this application.

The listed tenant and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure ("Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter*-The landlord had 2 witnesses present at the beginning of the hearing, and both parties were excused until it would be their time to provide testimony. During the course of discussing preliminary matters, the tenant submitted that there has been a no-contact order against one of the landlord's witness, "PW". The tenant submitted that she is not to have any contact with PW, either in person or orally, according to a peace officer. I note that neither of the landlord's witnesses provided testimony at the hearing, due to the sufficiency of landlord's evidence and as both witnesses had provided written statements, confirmed by the landlord to be content of their oral evidence. I have reviewed the landlord's witnesses' written statements.

*Preliminary matter#2*-The landlord submitted that she struggled with the English language and would be challenged to fully participate in the hearing, further submitting that PW would have been her agent, although she was also listed as a witness to the events. The landlord was informed that I would speak as succinctly as I could and would repeat questions or statements in order to have her better understand me; however, the landlord continued to struggle to get the full gist of all the testimony and the hearing. It is noted that I informed the landlord it was her responsibility to have an agent or family member attend the hearing as her representative in order to fully participate and have the landlord's position fully presented.

*Preliminary matter #3*-I have determined that the portion of the tenants' application dealing with a request for an order for emergency repairs and for monetary compensation is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenants' Application and dismissed that portion, **with leave to reapply**.

The hearing proceeded only upon the tenants' application to cancel the Notice and for an order suspending or setting conditions on the landlord's right to enter the rental unit.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

#### Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice and for an order suspending or setting conditions on the landlord's right to enter the rental unit?

#### Background and Evidence

The written tenancy agreement shows that this tenancy began on December 1, 2013, that monthly rent began at \$1600.00, and that the tenants paid a security deposit of \$800.00 and a pet damage deposit of \$500.00.

The tenant submitted that monthly rent has been increased to \$1640.00.

The written tenancy agreement submitted by both parties reflects that the rental premises are a single family dwelling.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenants the Notice. The Notice was dated September 21, 2015, was served by attaching the document to the tenants' door on that date, according to the tenant, and listed an effective end of tenancy of move-out date of October 22, 2015.

The causes listed on the Notice alleged that the tenants 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, put the landlord's property at significant risk, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardized a lawful right or interest of another occupant or the landlord.

Additionally, the tenant submitted that the landlord amended her Notice and added two more alleged causes. The alleged causes were that the tenants were repeatedly late in paying rent and that the tenants have assigned or sublet the rental unit without the landlord's written consent. The landlord agreed that she had amended her original Notice, and I therefore include the additional causes as part of the tenants' application.

The tenant submitted a copy of the amended Notice.

In support of their Notice, the landlord submitted that all the causes listed on the original Notice involved one issue, that being that the tenants have blocked access to her suite contained in the rental unit by changing the deadbolt lock. In explanation, the landlord submitted further that it was her intention from the start of the tenancy to rent only the upstairs suite for \$1300.00 as she wanted to use kitchen and bathroom downstairs; however, the tenants wanted to rent the living room downstairs for a monthly rent of \$1600.00.

The landlord submitted further that the tenants verbally agreed that the landlord would retain use of the suite in the basement of the residential property and have reneged on their verbal agreement, as she has been denied entrance to the shared laundry room and bathroom.

The landlord confirmed that she has on multiple occasions tried to enter the suite in the basement, but the tenants have changed the locks.

In response to my questions as to whether or not she has ever spent the night in the basement suite, which I repeated 4 times, the landlord was non-responsive as she said she did not understand the question.

The landlord confirmed that she is living with her boyfriend, who was listed as the landlord's witness, EA.

After hearing from the landlord, I determined that the statements of the landlord's witnesses, which would only corroborate what they had submitted in written form, was not required in order to make a determination of the issues.

#### *Tenant's response-*

The tenant submitted that their tenancy agreement with the landlord was for the entire house, and not a partial house.

The tenant denied that the parties had a verbal agreement that the landlord would retain partial use of the home, the basement suite, but did agree that the landlord, at her request, could store a couple of items as there was tight space at her boyfriend's house.

The tenant submitted that when they moved into the residential property, there was a stove and refrigerator in the basement, but the stove has since been removed and the refrigerator is unplugged. The tenant submitted further that the landlord does not do laundry at the residential property, has never slept in the home since their tenancy began, and that the only the 5 people listed on the tenancy agreement reside in the home.

The tenant denied being late on her rent payments. The tenant submitted copies of her rent receipts in support of her statements.

#### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

#### *Cancellation of the Notice-*

Under section 47 of the Act, a landlord may issue to the tenant a notice seeking to end the tenancy for the various reasons listed in this section, and specifically in this case, that the tenants 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, put the landlord's property at significant risk, has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord, or jeopardized a lawful right or interest of another occupant or the landlord. Although the landlord may not just add boxes to the same Notice, I have additionally considered the other two alleged causes, more specifically, the landlord's allegations that the tenants were repeatedly late in paying rent and that the tenants have assigned or sublet the rental unit without the landlord's written consent.

The landlord bears the burden of proving she has grounds to end this tenancy and must provide sufficient evidence to prove the causes alleged on her Notice.

In this case, the landlord's original listed causes, even the ones claiming that the landlords have engaged in illegal activity, arise from the landlord's argument that she is entitled to partial use of the rental unit, based upon a verbal agreement.

The purpose of a written tenancy agreement is to communicate to the parties the terms and conditions of the tenancy, which are then enforceable.

I have reviewed the identical written tenancy agreements submitted by both parties and find that the description of the rental unit, that being a single family dwelling, to be clear and unambiguous. I find there is no provision in the written tenancy agreement which would allow the landlord use of a portion of the rental unit and the clear intent of the tenancy agreement, with its use of the phrase, single family dwelling, in my reading is that the tenants will have unencumbered and unfettered use and possession of the entire home and common area during this tenancy.

As to the landlord's argument that the parties had a verbal agreement that the landlord would use a portion of the basement, I find this position unfounded and unsupported. The tenants disagreed with this submission of the landlord, and I find that conflicting and disputed testimony does not sufficiently meet the burden of proof.

I also find the landlord submitted insufficient evidence to support that the tenants have paid rent late or that they have sublet or assigned the tenancy. The tenant submitted copies of receipts showing timely payments and the landlord failed to submit any accounting records or tenant ledger sheets. There was no specific information about any other occupants of the rental unit.

Due to the above, I therefore find that the landlord has submitted insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated September 21, 2015 is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

*Order suspending or setting conditions on the landlord's right to enter the rental unit-*

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*.

Pursuant to section 29 of the *Act*, a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the *Act* requires that the notice of entry must be made at least 24 hours prior to the planned entry, contain the purpose for entering, which must be reasonable, and provide a specific time and date.

In considering the evidence of the both the landlord and the tenant, I find that the landlord has confirmed her attempts to repeatedly enter the rental unit without notice, under the wrong assumption that she retained rights to a partial use of the rental unit, as more fully set out above.

I advised the landlord during the hearing of her obligations to provide the tenants with a proper written notice to enter the rental unit, which must be at least 24 hours in advance, and in consideration of the deemed service provisions of section 90 of the *Act*. If the landlord chooses to attach the notice of entry to the tenants' door, the tenants are not deemed to have received that notice for 3 days and the entry may then not be earlier than 24 hours later. If the landlord chooses to send the notice by registered mail, the tenants are not deemed to have received the notice for 5 days and the entry may then not be earlier than 24 hours later.

As I have found that the landlord herself confirmed attempting to enter the rental unit without proper notice, I therefore order the landlord to comply with her obligations as described above in providing notice to the tenants, which must also contain the specific time, date, and purpose for entering.

As I have ordered the landlord to comply with her obligations under sections 28 and 29 of the Act, I will not at this time suspend the landlord's rights under these sections to enter the rental unit, upon proper notice to the tenants.

The landlord is advised that, even though the tenants are still granted leave to reapply for monetary compensation from the landlord, her failure to comply with this order may subject the landlord to financial compensation being granted to the tenants for their loss of quiet enjoyment and for an order suspending the landlord's rights to enter the rental unit.

I allow the tenants recovery of their filing fee of \$50.00, and direct them to deduct this amount from their next or a future month's rent payment in satisfaction of their monetary award, notifying the landlord of when this deduction is being made. The landlord may not serve the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("Notice") when the tenants have made this deduction of \$50.00.

During the hearing, the landlord submitted that tenants have changed the locks to the rental unit and the tenant submitted that they were required to do so as the locks were broken and they changed all 4 locks, fitting one master key. The tenant submitted that she has provided the landlord with the master key, but in the event she has not, the tenant should be aware that she is required to provide the landlord keys for entry to the rental unit.

#### Conclusion

The tenants' application seeking cancellation of the Notice and an order setting conditions of the landlord's right to enter the rental unit have been granted.

The portion of the tenants' application dealing with a request for an order for emergency repairs and for monetary compensation is dismissed, with leave to reapply.

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: November 20, 2015

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Residential Tenancy Branch

