



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes DRI, CNL, MNDC, OLC, ERP, RP, RR, OPL, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on November 5, 2015 with an amendment made on November 23, 2015 for:

1. An Order cancelling a notice to end tenancy - Section 49;
2. A Monetary Order for compensation - Section 67;
3. An Order for the Landlord to comply – Section 62;
4. An Order for emergency and other repairs – Section 32;
5. An Order for a rent reduction – Section 65; and
6. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 25, 2015 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Does the Landlord have a good faith intention to end the tenancy?

Is the Landlord required to make repairs?

Is the Tenant entitled to any compensation including a rent reduction?

### Background and Evidence

The following are agreed facts: The tenancy of a basement suite in a house started in May 2005. The Landlords, a wife and husband, live in the house above the suite. At the onset of the tenancy was rent \$500.00 payable monthly on the first day of each month. On November 23, 2015 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord's use (the "Notice"). The Notice is dated November 20, 2015 and contains an effective move out date of January 31, 2016. The reason stated on the Notice is that the Landlord or a close family member of the Landlord will occupy the unit.

The Landlord states that their elderly mother will move into the basement suite as she has developed osteoporosis over the past year and has more recently become unsteady on her feet. The Landlord states that a physician has recommended that their mother not live in a place where she has to climb stairs. The Landlord states that the mother's bedroom is currently on an upper level and that she has to climb 16 stairs to reach it. The Landlord states that there are no other enclosed rooms in the main floor of the house and that the mother is currently sleeping on the couch in the family room. The Landlord provided a note from a physician in relation to the mother's condition dated November 30, 2015.

The Tenant states that he sees the mother every day and that there does not appear to be any problem with the mother as she does not use a cane or any other walking assistance. The Tenant states that she is always up and cooking food. The Tenant states that the Landlord never said anything about needing the unit until this dispute arose. The Tenant states that the Landlord is using the mother as an excuse to end the tenancy.

The Tenant states that the Landlord increased the rent twice during the tenancy without providing a notice of rent increase on an approved form and by amounts that exceed the amounts allowed under the Act. The Tenant states that the Landlord verbally informed the Tenant of the first rent increase of \$50.00 per month and wrote a note for the second increase of \$50.00 per month. The Tenant claims the overpaid rents of \$4,400.00. The Landlord does not dispute that rents were increased as stated by the Tenant.

The Tenant states that on June 9, 2015 his mattress was damaged by a leak from the upper house. The Tenant states that the leak was not finally repaired until November 13, 2015. The Tenant states that the leak was made up of all the disposed waters from the upper house including from the toilet. The Tenant states that the Landlord offered to assist the Tenant with manually cleaning the mattress with a cleaning product. The Tenant states that this was not felt to be sufficient given the type of leakage so the Tenant purchased a new mattress at a cost of \$510.00. The Tenant claims \$490.00. The Tenant states that the damaged mattress originally cost \$500.00 when purchased 10 years ago. The Tenant states that the mattress had a life expectancy of 20 years and that the replacement mattress was of lesser quality than the original mattress. The Landlord states that it is not responsible for the damage to the mattress as the leak was not big and the Landlord offered to wash the mattress. The Landlord also states that the mattress was 10 years old when the Tenant moved in. The Tenant states that repairs to the ceiling have been completed and withdraws his claim for emergency repairs to the ceiling.

The Landlord agreed to repair or replace the plastic vertical blinds in the Tenant's unit no later than January 16, 2016. The Landlord agrees to inspect the outdoor sensor light on the date of the hearing and repair or replace as needed as soon as possible.

The Tenant states that there is a crack around his window that allows cold air into the unit. The Tenant states that the Landlord was asked in a letter sent in October 2015 to repair the window but this has not happened. The Landlord states that the Tenant slides the window too hard causing it to fall off. The Landlord states that he has already fixed it twice and states that it could be repaired by January 16, 2016.

The Tenant states that he has been subjected to harassment by the male Landlord over the past couple of years but that it has recently gotten worse. The Tenant states that the Landlord had previously scratched his vehicles parked in the approved driveway parking space but the Tenant ignored this behavior on the urging of the female Landlord and simply painted over the scratches. The Tenant states that when he would confront the male Landlord the actions were denied and the Landlord would tell the Tenant not to park his vehicle in the driveway.

The Tenant states that the most recent incident occurred in October 2015 when he and his girlfriend saw the Landlord swipe the side of the Tenant's truck with something in the Landlord's hand. The Tenant states that a large scratch was left on his truck, that he was astounded by the Landlord's behavior and that he should have called the police but didn't. The Tenant claims that the extent of the scratch finally made the Tenant act. The Tenant claims \$100.00 for compensation for the harassment. The Tenant states that after this application was made the Landlord ordered the Tenant to remove his vehicles.

The Landlord states that he did not make any scratches to the Tenant's vehicles. The Landlord states that the Tenant was asked to move his vehicles because he was using the driveway to buy and sell his cars. The Landlord husband states that he is upset with the Tenant for doing this and that the Tenant always cries to the Landlord wife. The Landlord states that the Tenant can only park one vehicle in the driveway. The Tenant states that he has been parking cars in the driveway from the onset of the tenancy and that he was given full access to one side of the driveway for as many vehicles as can fit.

It is noted that the Tenant's application requests the provision of rent receipts from the Landlord however no other submissions were made in relation to this claim and no evidence was provided at the hearing in relation to this claim.

### Analysis

Section 49 of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Although the timing for ending the tenancy appears suspect, given the undisputed evidence of the age of the Landlord's mother and her medical state I find on a balance of probabilities that the Landlord does need the unit for the mother. As a result I find that the Notice is valid and that the Tenant must move out of the unit. The Landlord is entitled to an order of possession however considering the

late date of this hearing, the long term nature of the tenancy and as there is no evidence of any urgency in getting the mother into the rental unit, I make the order of possession effective 1:00 p.m. on February 29, 2016.

Section 42 of the Act provides that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase and the notice of a rent increase must be in the approved form. Section 43(1) of the Act provides that a landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

Section 43(5) of the Act provides that if a landlord collects a rent increase that does not comply with the Act, the tenant may deduct the increase from rent or otherwise recover the increase. As the Landlord did not provide the Tenant with the correct amount, time and form for the rental increases and as there is no agreement by the Tenant in writing to the increases I find that the Tenant is entitled to return of the over payment in the amount of **\$4,400.00**. Any rent, or rental equivalent, that remains payable to the end of the tenancy by either the Landlord or the Tenant must be based on the original rental amount of \$500.00 per month.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. As the tenancy will continue for a while longer, I find that the Landlord must maintain the unit until the end of the tenancy. Based on the undisputed evidence that the Tenant's window is allowing cold air into the unit and given the current cold temperatures, I find that the Tenant is entitled to repair of his window and that such repair be made earlier than suggested by the Landlord. I therefore order the Landlord to repair the window to ensure no cold air entry through the window by no later than January 9, 2016. The Landlord was given this order verbally on the date of the hearing.

Given the Landlord's agreement for the remaining repairs I dismiss the Tenant's claim for compensation for the window and repairs with leave to reapply for compensation and further repair orders should the Landlord fail to make the repairs as agreed or ordered.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. Given that the leak

was not repaired by the Landlord for some time I find that the Landlord acted negligently in not making needed repairs. I also find that the negligence led to the Tenant's property being damaged and that the Tenant is therefore entitled to compensation. However, given the age of the mattress I find that the Tenant has not substantiated the amount of loss claimed and that the Tenant is therefore only entitled to a nominal amount of **\$100.00**.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". Given the evidence that the Tenant has been allowed to park any number of vehicles over the span of the long term tenancy and considering the Tenant's persuasive evidence of a scratch on his truck I find that the Tenant has substantiated on a balance of probabilities that the Tenant was harassed by the Landlord over a period of time in relation to the parking. As a result I find that the Tenant is entitled to the compensation claimed of **\$100.00**.

Section 26(2) provides that a landlord must provide a tenant with a receipt for rent paid in cash. AS the Tenant provided no evidence in relation to the claim for rent receipts, it is unknown whether the Tenant is seeking receipts for rent payments made by cash or cheque. Further considering that the tenancy is ending and no rent will likely be paid to the end of the tenancy whether by cash or otherwise, I dismiss this claim.

As the Tenant's application has been successful in relation to the repair and compensation claims I find that the Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$4,650.00**.

Section 55 of the Act provides that if a tenant makes application to dispute a notice to end tenancy, if the notice to end tenancy complies in form and content, and during the hearing the notice is upheld as valid, the landlord must be granted an order of possession. Although the Landlord was successful in obtaining an order of possession as claimed in the application as this application was not necessary, I decline to award the Landlord with recovery of the filing fee.

### Conclusion

I grant an order of possession to the Landlord effective 1:00 p.m. on February 29, 2016.

I grant the Tenant an order under Section 67 of the Act for **\$4,650.00**. If necessary, this order may be filed in the Small Claims 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: January 08, 2016

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Residential Tenancy Branch

