



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, MNDC, LRE, OLC, FF  
OPC

### Introduction

This hearing was scheduled in response to an application by the tenant for cancellation of a notice to end tenancy for cause / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order suspending or setting conditions on the landlord's right to enter the rental unit / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord made an oral request for an order of possession in the event the tenant's application for cancellation of a notice to end tenancy does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

The unit which is the subject of this dispute comprises the 2 upper levels of a 3 storey house. While vacant since December 31, 2015, the basement portion of the house was previously rented to a second party. Further, a coach house located on the grounds of the property is currently rented to a third party.

Pursuant to a written tenancy agreement, the 2 year fixed term of tenancy is from March 01, 2014 to March 01, 2016. The agreement provides that at the end of the fixed term, "the tenancy may continue on a month-to-month basis or another fixed length of time." Monthly rent of \$1,850.00 is due and payable in advance on the first day of each month. A security deposit of \$925.00 and a pet damage deposit of \$400.00 was collected.

In late April 2015 the original owner / landlord informed the tenant that he would be undertaking to sell the unit. Effective on or about June 15, 2015 the unit was sold, and

the current owner / landlord is the other party to this dispute. In early October 2015 the current owner / landlord posted a sign at the front of the house, advertising it for sale. During the month of October 2015 there were extensive contacts between the parties in relation mainly to the scheduling of appointments for viewing of the house by prospective purchasers. In short, the tenant claims that the requirements of the Act were not strictly followed where it concerns the provision of 24 hours' notice and, in the result, the tenant was frequently inconvenienced. Additionally, the tenant claims that there were occasions when the landlord cancelled a showing without notice or simply failed to attend at the time scheduled. The landlord takes the position that as a result of the tenant's cancellation / refusal to agree to 3 showings with one particular prospective purchaser, a potential sale fell through.

Following from the events set out above, pursuant to section 47 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated October 31, 2015. The notice was served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is November 31, 2015. The reason identified on the notice in support of its issuance is as follows:

Tenant or person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord.

Subsequently, the tenant filed an application to dispute the notice on November 02, 2015, and the tenant presently still resides in the unit. The parties agree that no significant interaction has occurred between them since October 31, 2015, and the landlord testified that the unit is not presently advertised for sale.

While the parties tentatively explored the prospects for a mutually agreeable settlement of the dispute during the hearing, the interactions between them became argumentative and a resolution was not achieved.

### Analysis

Based on the testimony of the parties, in addition to the extensive and detailed documentary evidence, the various aspects of the application(s) and my related findings are set out below.

*Order of possession versus Cancellation of a notice to end tenancy for cause*

Section 47(1) of the Act provides in part:

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,...

I find there is insufficient evidence that the landlord's provision of notice to enter the unit complied strictly and consistently with section 29 of the Act which addresses **Landlord's right to enter rental unit restricted**. I further find there is insufficient evidence that the actions of the tenant in relation to the landlord's attempt(s) to show the unit were sufficient to meet the statutory test of significant interference or unreasonable disturbance. In the result, the landlord's notice to end tenancy is set aside, the landlord's oral request for an order of possession is dismissed, and the tenancy continues in full force and effect.

---

*An order suspending or setting conditions on the landlord's right to enter the rental unit*

*An order instructing the landlord to comply with the Act, Regulation or tenancy agreement*

The attention of the parties is drawn to section 29 of the Act which addresses **Landlord's right to enter rental unit restricted**, and provides in part:

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

I am persuaded that the landlord has achieved a fuller understanding of the above statutory provisions since the time when difficulties between the parties began in earnest in October 2015. Going forward, the landlord is hereby ordered to comply strictly and consistently with the above statutory provisions. I otherwise see no requirement for the issuance of an order which suspends or sets conditions on the landlord's right to enter the rental unit; accordingly, that particular aspect of the tenant's application is dismissed.

---

*A monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement:*

*\$1,850.00: reimbursement of rent paid for October 2015 (alleged breach of right to quiet enjoyment)*

Section 28 of the Act addresses **Protection of tenant's right to quiet enjoyment**, and provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

I find that the absence of any opportunity taken by the parties to become acquainted and establish at least a basic working relationship / trust with each other after the property was purchased from the original owner / landlord, helped set the stage for interpersonal problems that later arose between them. For example, as the tenants did not feel they knew the landlord, it was difficult for them to feel comfortable being absent from the unit on any occasion when the landlord wished to show the unit to prospective buyers. This in turn led to annoyance and frustration for the tenants who undertook to cancel / change certain personal plans in order to be present in the unit for a showing.

Added to this was the issue addressed above, which is that there is some question around whether proper notice to enter the unit was given strictly and consistently by the landlord. In sum, I find there is insufficient evidence of a breach of the right to quiet enjoyment within its meaning under the Act. This aspect of the application must therefore be dismissed.

---

*\$925.00: reimbursement of ½ month's rent paid for November 2015 (alleged breach of right to quiet enjoyment)*

*\$925.00: reimbursement of ½ month's rent paid for December 2015 (alleged breach of right to quiet enjoyment)*

*\$925.00: reimbursement of ½ month's rent paid for January 2016 (alleged breach of right to quiet enjoyment)*

The tenant claims s/he suffered stress during November, December 2015 and part of January 2016 as a result of preparations being made for the hearing, and in anticipation of participating in the hearing. I find that this claim fails to meet the test of a breach of the right to quiet enjoyment, and this aspect of the application is therefore dismissed.

---

*\$32.76: (\$11.34 + \$21.42) cost of registered mail*

*\$34.40: photocopying costs*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, these 2 aspects of the application are hereby dismissed.

---

***\$50.00:** recovery of the filing fee*

As the tenant has succeeded in having the landlord's notice to end tenancy set aside, I find that the tenant has also established entitlement to recovery of the **\$50.00** filing fee. I order that the tenant may recover this amount by way of withholding it from the next regular payment of monthly rent.

---

### Conclusion

The landlord's notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

The tenant is ordered that s/he may withhold **\$50.00** from the next regular payment of monthly rent in order to recover the filing fee. The tenant's application for certain other compensation is hereby dismissed.

The landlord is ordered to comply with the provisions set out in section 29 of the Act.

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 06, 2016

---

Residential Tenancy Branch

