



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNR CNC OPR OPC DRI ERP RR

### **Introduction**

Both parties attended this hearing and confirmed service of the Notices to End Tenancy and the tenant's Application for Dispute Resolution. The Notice to End Tenancy for unpaid rent is dated March 2, 2016 to be effective March 12, 2016 and the landlord confirmed the rent was paid within two days of service of the Notice. I find this 10 Day Notice is cancelled pursuant to section 46 of the Act. The Notice to End Tenancy for cause is dated March 14, 2016 to be effective May 1, 2016 and this is automatically corrected under section 53 of the Act to the effective date of April 30, 2016. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel notices to end tenancy for unpaid rent and for cause pursuant to sections 46 and 47;
- b) To order the landlord to cease disturbing his reasonable enjoyment contrary to section 28 by texting him at work;
- c) To obtain reimbursement for an emergency repair;
- d) To dispute an additional rent increase; and
- e) To recover the filing fee for this application.

### **Issue(s) to be Decided:**

Has the landlord proved on the balance of probabilities that there is good cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the landlord is disturbing him by texting him at work and that he is entitled to reimbursement for an emergency repair? Is there an additional rent increase contrary to the legislation? Is he entitled to recover the filing fee for this application?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy

commenced in March 15 2011, it is now a month to month tenancy, rent is \$900 a month and a security deposit of \$450 was paid in March 2011. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant is repeatedly late paying rent;
- b) The tenant has allowed an unreasonable number of occupants in the unit.

This is described as an 800 sq. ft. unit in a 4 unit complex with plenty of parking. The tenant said he has had his daughter and son living with him. He described how each of them has their own bedroom and he has a sleeping arrangement in the living area. He states this is not an unreasonable number of occupants and said the situation has continued for a long time but recently relations between the landlord and him have deteriorated and the landlord is subjecting him to abuse by sending insulting emails to him on his work telephone. He said he is not repeatedly late paying rent. He made one payment late as he had to pay for an emergency repair to the stove due to a gas leak. Mice had chewed the lines.

The landlord's agent said that the tenant told the landlord verbally when he entered into the tenancy agreement that he would only have a daughter living with him but now the son is living there too. She said this is a problem for now there are 3 cars parked instead of the two permitted. She said the tenant had paid his rent late in January, February and March, 2016 with each cheque dated for the third of each month. There is no lease in evidence and no copies of the cheques. She agreed the landlord would stop texting the tenant and send messages by email now as requested. She said the landlord had been given the telephone number he used by the tenant. The tenant explained that it was a work phone given to him but he does not want to use it for abusive messages.

In evidence are the Notices to End Tenancy, statements by the tenant, documents related to the gas leak and an Application for an Additional Rent Increase. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

I find the 10 Day Notice is cancelled pursuant to section 46 of the Act as the tenant paid his rent within the 5 days permitted. I find insufficient evidence that the tenant is repeatedly late in paying rent. When ending a tenancy, the onus of proof is on the landlord to prove they have good cause to end the tenancy. The landlord provided insufficient evidence to support her allegation and the tenant denied it. In respect to the second cause cited, I find insufficient evidence that the tenant is permitting an unreasonable number of occupants to occupy the suite. The weight of the evidence is

that his adult children each have a room and he has a separate room for sleeping. He said his son may move for a job in the future. I do not find this is an unreasonable number of occupants.

Although the landlord said that the number of cars was a problem, I find this is not a cause given in the Notice to End Tenancy. I also find the tenant's evidence credible that there is plenty of parking in the 4 unit complex and none of the other residents have complained about his family's cars. I hereby set aside and cancel the Notice to End Tenancy for cause dated March 14, 2016.

I find there was an emergency repair needed due to a gas leak. I find the evidence is that the tenant had to spend \$50 on this. Pursuant to section 33 of the Act, I find the landlord must reimburse him for this emergency repair.

In respect to the additional rent increase, I find this is merely an Application for an Additional Rent Increase. The landlord must bring this application to the Residential Tenancy Branch to be authorized to impose it pursuant to section 43(3) of the Act. Until such a Decision is issued, the authorized rent increase for 2016 is 2.9% pursuant to section 43 of the Act and any Notice of Rent Increase must be served on the tenant three months in advance pursuant to section 42 of the Act. I suggest the landlord consult sections 42 and 43 of the Act to clarify this; meanwhile there is no increase.

**Conclusion:**

I hereby set aside and cancel the Notice to End Tenancy for Cause dated March 14, 2016. **The tenancy is continued.** I find the tenant is entitled to \$50 reimbursement for the emergency repair of the gas leak and to recover his filing fee of \$100.

**I HEREBY ORDER THAT:**

- 1. The landlord ceases texting the tenant on his work phone and communicates by email with him as requested.**
- 1. The tenant may recover reimbursement for the emergency repair and filing**
- 2. fee by deducting \$150 from his rent.**

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: April 21, 2016

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Residential Tenancy Branch

