



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AS, CNC, ERP, FF, MNDC, OLC, RP, RR

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein she sought the following Orders:

1. to allow the Tenant to assign or sublet because the landlord's consent has been unreasonably withheld;
2. to cancel a Notice to End Tenancy for Cause issued on April 27, 2016 (the "Notice");
3. an Order that the Landlord comply with the *Residential Tenancy Act*, the *Regulations*, or the residential tenancy agreement;
4. an Order for repairs, emergency and otherwise;
5. an Order that the Tenant be permitted to deduct the cost of repairs, services or facilities from the rent;
6. a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, the *Regulations*, or the residential tenancy agreement; and,
7. recovery of the filing fee.

Both parties appeared at the hearing. The Landlords were represented by an agent, P.L. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

*Residential Tenancy Branch Rule of Procedure 2.3* provides Arbitrators the discretion to dismiss unrelated claims with or without leave to reapply.

Early hearing dates can be obtained on the basis of urgency. Applications relating to an early end to tenancy, orders of possession and emergency repairs are given priority hearing dates.

It is my determination that the priority claims made in the Tenant's Application are regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy, the Tenants' claim for an Order that the Landlord make emergency repairs, and her request to reduce her rent for repairs not made. Her monetary claim for \$5,528.00 is not sufficiently related to these claims and as such, I exercise my discretion to dismiss, with leave to reapply, the Tenant's monetary claim for \$5,528.00. Further, for reasons which will be set out in this my Decision, her request for authority to sublet pursuant to section 65 is unnecessary and is hereby dismissed.

*Residential Tenancy Rules of Procedure* provide that when a Tenant makes an application to cancel a Notice, the Landlord presents their case first as the Landlord must prove the Notice.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to an Order that the Landlord make emergency repairs?
3. Is the Tenant entitled to reduce her rent for services or facilities not provided?
4. Should the Tenant recover her filing fee?

### Background and Evidence

The Landlords' Agent, P.L., testified on the Landlord's behalf. He confirmed that he was not the original person who rented out the rental unit to the Tenant.

The residential tenancy agreement was filed in evidence and which indicated that this one year fixed term tenancy began on December 1, 2015 and which is set to expire November 31, 2016. P.L. testified that the Tenant moved in November 14, 2015 and paid a pro-rated amount of rent for the 16 days remaining in November.

According to the tenancy agreement monthly rent was payable in the amount of \$2,800.00 on the 1<sup>st</sup> of the month.

The Landlord issued a 1 Month Notice to End Tenancy for Cause on April 27, 2016. The reasons cited on the Notice are as follows:

1. the Tenant is repeatedly late paying rent;
2. the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
3. the Tenant has assigned or sublet the rental unit/site without the Landlords' written consent.

P.L. testified that the Tenant was repeatedly late paying rent as follows:

- The Tenant's November 14-30, 2015 rent cheque in the amount of \$1,586.61 was returned as being stopped.

*Notably, this payment was before the tenancy began and there was no indication on the tenancy agreement as to when this payment was to be made.*

- The Tenant was late paying her January 2016 rent as it was returned N.S.F.; P.L. testified that the Tenant paid her January rent on approximately January 13, 2016.
- The Tenant has yet to pay her June 2016 rent.

In terms of the second reason set out in the Notice, P.L. testified that the Tenant breached the tenancy agreement by subletting her rental unit. P.L. testified that the rental unit is a two bedroom plus den. He claimed that the Tenant breached the tenancy agreement because the P Tenant had allowed another person to live with her in the rental unit.

P.L. further testified that the bylaws of the Strata Unit mandate that the Tenant must provide the names of any people living in the rental building. He claimed the Tenant refused or neglected to provide the names of other occupants in the rental unit contrary to the strata bylaws and therefore in breach of the tenancy agreement.

P.L. stated that the strata bylaws were provided to the Tenant at the beginning of her tenancy which he claimed were attached to the tenancy agreement. Notably, the strata bylaws were not in evidence. When I asked P.L. why they were not provided with the tenancy agreement in evidence he simply responded that the "Tenant would have read them". He then stated that they were reproduced in the letters from the Strata to the Landlord. Those letters were provided in evidence.

P.L. testified that the Notice was posted on the rental unit door on April 27, 2016 at 9:00 p.m.; introduced in evidence was a copy of the Proof of Service confirming same.

The Tenant testified that she was not told when to pay her November rent. She confirmed that she paid her January rent late. She also testified that she has yet to pay her June 2016 rent as the effective date of the Notice was May 31, 2016 and since she is claiming a rent reduction she wanted to see what her rent for June would be. She stated that she called the Residential Tenancy Branch and she was told to hold off paying her June rent because of the hearing today. She also stated that she was concerned that if she paid her June rent she would not get it back if the Notice was upheld and she was forced to move out.

The Tenant stated that when she moved in she dealt with the Landlord's friend, A., who she believes is a licensed building manager. The Tenant testified that she never received a copy of the strata bylaws at the time that she entered into the tenancy agreement or at any other time following. She did, however sign the Form K. A copy of this document was introduced in evidence, although the strata plan number was not completed.

The Tenant also testified that when she moved in she told the Landlord's representative that she needed a three bedroom apartment as she has a 15 year old daughter, A.B., who lives with her, as well as a roommate who assists the Tenant with her dialysis.

The Tenant confirmed that her cousin, M.C., lived with her at the start of the tenancy. The Tenant also confirmed that another person, K.D., currently lives in the rental unit with her and moved in approximately 1 month ago. Both individuals live with her to assist with her dialysis.

The Tenant further testified that she informed the Landlord's agent of M.C.'s name at the start of the tenancy. She also testified that she informed P.L. about M.C. when he was in the rental unit taking pictures of her flooring as he was getting quotes for the replacement of the carpet.

The Tenant further testified that there was no issue with her roommate until she brought the "carpet issue" to the Landlord's attention.

The Tenant confirmed that on January 19, 2016 she had a dialysis delivery and as a result she had the elevator blocked off on that date. She stated that the strata believed that she had a roommate move in at that time, and levied a \$100.00 move in charge to the Tenant. A copy of their letter dated January 19, 2016 was introduced in evidence. The Tenant submitted that the strata erroneously believe she has sublet her rental unit, when in fact she has a roommate living with her as an occupant. The Tenant stated that she has tried to resolve this issue with the Strata but they will only deal with the Landlord.

The Tenant confirmed that the emergency repairs she is requesting on her application filed April 25, 2016 relate to the mold on the hallway carpet which is a health concern for her. She confirmed that the carpet needs replacing and the Landlord refuses to do so.

The parties attended a hearing on March 22, 2016 pursuant to an application by the Tenant filed on February 9, 2016, at which time the Landlord was ordered as follows:

*On the basis of the Tenant's testimony that the carpet in the hallway is still badly stained, I find that the Landlord is obligated to either clean the carpet or replace the carpet in the hallway. **I hereby Order the Landlord to clean the carpet in hallway and, if the cleaning does not adequately remove the stain, to replace the carpet in that area prior to April 30, 2016.***

The Tenant stated that she believes that the Landlord is trying to evict her simply because she obtained an Order that he deal with the carpets and he does not wish to do so.

The Tenant also submitted that she signed the Form K as required on November 5, 2015. This document was in evidence. Correspondence from the strata suggests the Landlord did not provide that document to the strata in a timely fashion which resulted in fines being levied against the Landlord. The Landlord's agent gave no explanation as to why as of February 2, 2016 the Landlord had not provided this document to the strata as it was signed in November the previous year.

In reply to the Tenant's submissions P.L. testified that the Landlord did not clean or replace the carpet as Ordered, instead the Landlord instructed P.L. to issue a 1 Month Notice because the Landlord was advised the flooring replacement would be easier to do when the rental unit was vacant.

P.L. stated that he did not know about M.C., and that he only found out about her because of the letter issued by the Strata on January 19, 2016. P.L. then stated that if M.C. was known to the previous manager, her name would have either been on the residential tenancy agreement or on the Form K.

P.L. confirmed that the Tenant's 14 year old daughter's name is not on the residential tenancy agreement or Form K.

### Analysis

After careful consideration of the evidence filed and the testimony of the parties, I find the Notice should be cancelled for the following reasons.

The Landlord claimed the Tenant was repeatedly late paying rent. *Residential Tenancy Policy Guideline* 38 provides that three late payments are the minimum number required to justify a Notice issued for this reason.

In the present case, the Landlord claimed the Tenant was late paying rent for the November 14-30, 2015 time period, which predates the tenancy agreement. Notably, the tenancy agreement makes no mention of when that pro-rated rent payment was due. As such, I am unable to find the Tenant was late paying in November 2015, as no date was specified for this payment.

The Tenant conceded that she was late paying her January 2016 rent. As the Notice was issued on April 27, 2016, I find the Tenant had only been late paying once as of the date of the Notice, which is insufficient to support a finding that the Tenant was repeatedly late paying rent. For reasons set out further in my Decision, I find the Tenant is not late paying her June 2016 rent.

Accordingly, I find the Landlord has failed to prove the Tenant has been repeatedly late paying her rent.

The Notice also alleges the Tenant has assigned or sublet the rental unit without the Landlord's written consent. As noted during the hearing and in this my Decision, the Tenant continues to reside in the rental unit, and accordingly she has not assigned or sublet her tenancy. As such, the Landlord has failed to prove the Tenant has assigned or sublet the rental unit without the Landlord's written consent.

The Landlord also alleges the Tenant has breached a material term of the tenancy agreement as she has a roommate living with her.

I accept the Tenant's evidence that she informed the Landlord's representative, when she first moved in, that she would have a roommate to assist her with her dialysis. I also accept her evidence that she insisted on a two bedroom unit plus den as she required three bedrooms to accommodate herself, her roommate and her daughter.

Both the Landlord and the strata appear to have erroneous understandings of a sublet or assignment (as evidenced by the letter of January 19, 2016 submitted in evidence). The Tenant's roommate is an occupant as is her 14 year old daughter. The Tenant continues to reside in the rental unit and as such she has not assigned or sublet her tenancy. The Landlord did not allege the Tenant had an unreasonable number of occupants, nor does the evidence suggest this to be the case.

I also accept the Tenant's evidence that the Landlord's representative failed to provide her a copy of the strata bylaws when the tenancy began. P.L. was not present at that time, and accordingly, I prefer the Tenant's evidence over his in this regard. Further, as those bylaws were not introduced in evidence, I find it more likely that they were not attached to the residential tenancy agreement as claimed by P.L.

In all the circumstances, I am unable to find that the Tenant has breached a material term.

For these reasons, I find the Landlord has failed to prove the Notice should be upheld. **The Notice is cancelled and the tenancy shall continue until ended in accordance with the *Residential Tenancy Act*.**

As noted during the hearing, it was not necessary for me to consider whether the repairs requested by the Tenant were necessary. At the hearing on March 22, 2016 Arbitrator Senay found that they were. Arbitrator Senay specifically found that the Landlord “did not act responsibly when, after determining that the flooring would not be replaced the Landlord did not clean the carpet in the rental unit”.

I accept the Tenant’s evidence that the mold on the carpet is a health concern, particularly as she requires dialysis.

Arbitrator Senay Ordered that the Landlord clean or replace the carpet in the hallway *prior to April 30, 2016*. She also permitted the Tenant to reduce her rent by \$140.00 until such time as the Landlord applied for dispute resolution and satisfied an arbitrator that the hallway carpet has been adequately cleaned/replaced.

As P.L. testified that the Landlord chose to issue the Notice rather than comply with the Order of Arbitrator Senay. This type of behaviour is unacceptable and may, if continued, result in administrative penalties being recommended under section 94.1 of the *Residential Tenancy Act*.

The Tenant applied for dispute resolution on May 1, 2016, thereby giving the Landlord notice of her request for a further rent reduction. The Landlord continued to ignore Arbitrator Senay’s Order despite receiving the Tenant’s Application.

**As such, effective May 1, 2016 I hereby authorize the Tenant, pursuant to section 65(1) of the *Residential Tenancy Act*, to reduce her rent to \$0.00 per month until such time as the Tenant agrees, in writing, that the carpet in the hallway has been adequately cleaned/replaced or until such time as the Landlord applies for an Application for Dispute Resolution and satisfies an Arbitrator that the hallway carpet has been adequately cleaned/replaced.**

As the Tenant has paid her May 2016 rent, and may have, by the time she receives this Decision paid her June 2016 rent, she is to be credited any amounts paid over \$0.00 for rent for May and June 2016.

I also award the Tenant recovery of the filing fee paid in the amount of \$100.00. This amount is to be credited to the Tenant and the Tenant is at liberty to apply for a

Monetary Order for the amounts overpaid for rent for May 2016 and June 2016 as well as the \$100.00 filing fee.

Conclusion

The Landlord failed to prove the Notice and as such the Tenant's application to cancel the Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Landlord has failed to comply with the Order made March 23, 2016 compelling him to clean or replace the hallway carpet by no later than April 30, 2016. Effective May 1, 2016, the Tenant is authorized to reduce her rent to \$0.00 per month until such time as the Tenant agrees, in writing, that the carpet in the hallway has been adequately cleaned/replaced or until such time as the Landlord applies for an Application for Dispute Resolution and satisfies an Arbitrator that the hallway carpet has been adequately cleaned/replaced.

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: June 03, 2016

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Residential Tenancy Branch