# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, MNDC, LRE, FF

Introduction
This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. A Monetary Order for compensation - Section 67;
3. An Order restricting the Landlord's entry into the unit - Section 70; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Tenant confirmed that he is no longer in the unit and that the claim to cancel the notice and to restrict landlord's entry is no longer relevant. As such these claims are dismissed.

Issue(s) to be Decided
Is the Tennant entitled to compensation?
Is the Tenant entitled to recovery of the filing fee?

Background and Evidence
The tenancy of a basement suite in a house started in October or November 2015. Rent of $950.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected $425.00 as a security deposit. The Tenant states that he moved out of the unit on June 7, 2016 and the Landlord states it was only discovered that the Tenant had moved out on June 9, 2016. The keys were left in the unit.

The Tenant states that the Landlord began harassing the Tenant after an open house that was held on May 7, 2016. The Tenant states that the Landlord threatened to tow the Tenants car from the driveway several times and called the Tenant repeatedly. The Tenant states that the Landlord verbally agreed before the tenancy agreement was signed that the Tenant could park in the driveway but does not recall if anything was set out in the tenancy agreement about parking. The Tenant states that the threats to tow

continued until the Tenant stopped parking in the driveway at the end of May 2016. The Tenant states that the Landlord texted the Tenant at least three times in two weeks to tell the Tenant to move the car because an open house was to occur. The Tenant does not know how many times the Landlord called the Tenant. The Tenant states that the Landlord threated to serve the Tenant with documents at the Tenant's place of employment and that the Landlord gave the Tenant's phone number to an unknown 3rd party who called the Tenant a couple of time trying to serve papers.

The Landlord states that after the tenancy agreement was signed and because the Tenant bought a new car the Landlord allowed the Tenant to park on the driveway but told the Tenant that could only occur if there were no issues with the parking. The Landlord states that issues with the parking only occurred when the Tenant refused to move his car for the open houses. The Landlord states that he only told the Tenant once on May 7, 2016 that the car would be towed if the Tenant did not move it. The Landlord states that the Tenant was informed in advance of the need to keep his car off the driveway during the open house on that day. The Landlord states that after this date the Tenant was told he could no longer park on the driveway but that the Landlord never told the Tenant after that that the car would be towed.

The Landlord states that he never called the Tenant and only texted the Tenant no more than 5 times. The Landlord argues that this is not out of the ordinary. The Landlord states that when the Tenant refused to answer his door to receive the papers the Landlord wanted to serve the Landlord asked the Witness to text the Tenant to let him know that they were there. The Landlord states that the Tenant never answers the Landlord's text but did reply to the Witness text.

The Tenant states that the Landlord entered the unit without proper notice or permission on May 7, 2016. The Tenant states that he was naked in the bathroom at the time of the entry and that the Landlord used a key to open the door. The Tenant states that the Landlord also entered the unit without formal notice on other occasions but that the Tenant allowed access on these other occasions. The Landlord states that although the key was used to open the door on May 7, 2016 it was because the Tenant was refusing to answer the door and the Landlord needed the Tenant to move his car. The Landlord states that no entry into the unit was otherwise made.

The Tenant states that the Landlord shut off the cable on May 7, 2016 and that it was not restored until the Tenant gave the Landlord a letter about this loss on May 21, 2016. The Tenant states that prior to this letter he only sent the Landlord a text about the issue on May 7, 2016 as the Tenant was trying to reduce communication with the Landlord.

The Landlord states that the cable was never disconnected but that it would periodically be interrupted due to common technical issues that had nothing to do with the Landlord but requires a reboot of the system in communication with the cable provider. The Landlord states that the Tenant may have lost a couple of hour's provision at the most due to the interruptions. The Landlord states that since the Landlord and tenant are on the same system they are both without cable and that the Landlord has a vested interest in keeping the system operational.

The Tenant states that since the Landlord was selling the house the Landlord should have served the Tenant with a notice to end tenancy and should have compensated the Tenant for ending the tenancy. The Tenant states that the Landlord served a one month notice to end tenancy for cause in order to avoid paying the Tenant any compensation. The Landlord states that the Tenant was told that the house would be sold to a purchaser who wanted to maintain the Tenant's tenancy. The Landlord states that the Tenant became irrational and screamed at the alarm company and power washer attending at the house. The Landlord states that they served the notice to end tenancy for cause because of the Tenant's behavior. The Tenant states that the only time he yelled was when the Landlord entered the Tenant's unit. The Tenant states that he did not yell at any one else and that he moved his car for the pressure washer. The Tenant claims moving costs due to the harassment and as the Tenant could not tolerate staying there any longer.

Analysis

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. Based on the undisputed evidence that the Landlord used his keys to open the door to the Tenant's unit I find that the Landlord did enter the rental unit. Based on the undisputed evidence that this occurred without any notice of entry or permission from the Tenant to entry I find that the Tenant has substantiated that the Landlord entered without right and breached the Tenant's right to privacy. Accepting that this was very disturbing to the Tenant but noting that this only occurred once, I find that the Tenant has substantiated nominal compensation of **$100.00** for this disturbance.

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 Tenant's evidence that the Landlord only texted the Tenant a couple of times about parking and the evidence that the Tenant does not know how many times the Landlord called the Tenant, I find that the Tenant has not substantiated any "course of vexatious comment". Considering that the tenancy agreement does not

include the provision of parking in the driveway, and based on the undisputed evidence that the Tenant was permitted to park on the driveway after purchasing a new car, I find that the Tenant was only provided a privilege and not a right under the tenancy agreement to park on the driveway. As a result I find that the Tenant has not substantiated any breach of the tenancy agreement or act in relation to the Landlord's request that the Tenant move its car and I dismiss the claim for compensation in relation to these acts. As the Tenant only informed the Landlord once about a loss of cable and accepting that the Landlord acted to remedy this loss and was not further informed of any loss I find that the Tenant has not substantiated that the Landlord was negligent in relation to the provision of cable and I dismiss the claim for compensation in relation to the cable. As a landlord is required under the Act to serve documents to end a tenancy I do not find that the Landlord's acts to locate the Tenant and to serve documents to be a breach of the Act and I dismiss claims for compensation in relation to the Landlord's efforts to serve the Tenant.

The Landlord has a right to end a tenancy by giving the Tenant a notice to end tenancy for cause just as the Tenant has the right to dispute the reasons for such a Notice. The Tenant made the choice to move out of the unit instead of disputing the Notice and I find therefore that the Tenant has not substantiated that the Landlord did anything contrary to the Act or tenancy agreement to wrongfully end the tenancy and I dismiss the claim for moving expenses.

As the Tenant has had some success with its claim I find that the Tenant is entitled to recovery of the $50.00 filing fee for a total entitlement to **$150.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **$100.00**. 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: July 4, 2016

Residential Tenancy Branch