



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Wheeler Cheam Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, RP, 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. An Order for repairs - Section 32; and
3. An Order to recover the filing fee for this application - Section 72.

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

### Preliminary Matters

Right from the onset of the hearing that commenced at the scheduled time of 9:00 a.m. the Landlord conducted himself in an arrogant, dismissive and disrespectful manner while providing his evidence. The Landlord also questioned the knowledge and integrity of the arbitrator. The Landlord was cautioned about making such statements and encouraged instead to provide relevant evidence. Shortly thereafter, at 9:22 a.m. the Landlord disconnected from the hearing. The hearing continued and concluded in the absence of the Landlord who did not return to the conference call.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to repairs?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy agreement indicates that the tenancy started on December 1, 2015 on a fixed length of time to end on November 30, 2016. The Landlord argues that this is not a fixed term tenancy.

The following is undisputed: Rent of \$2,300.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,150.00 as a security deposit and \$600.00 as a pet deposit. On May 27, 2016 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the "Notice").

The Landlord confirms that only two reasons for the Notice are valid and the other check marks were made in error. The Landlord confirms that the reasons for the Notice are

- Tenant has caused extraordinary damage to the unit/site or property/park; and
- Tenant has not done required repairs of damage to the unit/site.

The Landlord states that the Tenant has dirt and stains on all the carpets in the unit. The Landlord states that this was discovered during an inspection on May 5, 2016. The Landlord provides a letter dated May 5, 2016 to the Tenant in relation to the Landlord request that the carpets be repaired "and failing that the flooring be replaced with a type and quality that the landlord agrees to". The Landlord states that the Tenants were told that if they wanted to clean the carpets then it would "be fine". The Landlord states that while he does not know the age of the carpets, they were "newish" when the property was purchased by the owner a month prior to this tenancy. The Landlord states that the carpets are stained beyond repair. The Landlord states that on May 27, 2016 the Tenant told the Landlord that the carpets had not been cleaned. The Landlord states that he was upset during the inspection of the unit on May 5, 2016 and that the Landlord

only has the intention to re-rent the unit at the end of the tenancy and that the owners now have to replace all the carpets.

The Tenant states that when the Landlord attended the unit on May 5, 2016 the Landlord was very hostile and used profanity in front of the Tenant's children. The Tenant states that due to the Landlord's behavior the Tenant's mother confronted the Landlord about the owners wanting to sell the unit and using the carpets as an excuse. The Tenant states that they did not clean the carpet as the Landlord told them it would be of no use as the carpets had to be replaced. The Tenant states that the photos provided by the Landlord are only of the living room carpet and that none of the other carpets, with the exception of one stain in one bedroom, are soiled or stained. The Tenant states that the majority of the marks on the living room carpet are from dirt.

The Tenant states that the Landlord was told several months ago that the light switch in the bathroom does not work. The Tenant states that the Landlord was informed on May 27, 2016 that the kitchen sink has a leak. The Tenant states that the Landlord has done nothing to inspect or repair these items and claims repairs of these items.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, one or more of the following applies:

- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- the tenant does not repair damage to the rental unit or other residential property, within a reasonable time.

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

Although the carpets do appear to be soiled, there is no evidence that any of the soiled or possibly stained areas cannot be removed with appropriate steam cleaning. Further given the age of the carpets, stains cannot be considered extraordinary damage. I find therefore that the Landlord has failed to substantiate that the Tenant has caused extraordinary damage to the unit.

Given the Landlord's method of provision of evidence and demeanor at the hearing I accept the Tenant's evidence of the Landlord's hostility towards the Tenants and inappropriate behavior in front of children. I find that this hostility is not a result of the state of the carpets but more likely as a result of the particular temperament of the Landlord and I strongly caution the Landlord in his future dealings with the Tenants. This also leads me to accept that the Landlord did tell the Tenants not to bother trying to clean the carpets, although I note as well that the Landlord did not dispute this evidence. As a result I find that the Landlord intervened in the Tenant's ability to repair the carpets and that the Tenants are therefore not at fault for not having cleaned the carpets prior to or following the provision of the Notice. As a result I find that the Notice is not valid and that the Tenants are entitled to its cancellation. I encourage the Tenants to have the carpets thoroughly cleaned within a reasonable time.

Based on the Tenant's undisputed evidence of a leak and broken light switch and the Landlord's failure to attend or repair I order the Landlord to attend the unit within 2 days of receipt of this Decision to inspect the leak and light switch. I further order the Landlord to make necessary repairs to these items as soon as possible. Should the Landlord fail to act as ordered the Tenant has leave to reapply for compensation.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and of no effect. The tenancy continues.

The Landlord is ordered to inspect and make repairs as set out above.

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 15, 2016

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Residential Tenancy Branch