

# **Dispute Resolution Services**

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAPLE WOODS PROJECTS LTD. and [tenant name suppressed to protect privacy]

#### **DECISION**

Dispute Codes: CNC RP OPT FF

### <u>Introduction</u>

Both parties attended the hearing and the tenant confirmed service of the Notice to End Tenancy dated July 25, 2016 to be effective August 31, 2016 by posting it on her door. The tenant served their Application by registered mail and the landlord confirmed receipt. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) An Order that the landlord comply with the Act and make repairs;
- c) To obtain an Order of Possession for the tenant; and
- d) To recover the filing fee for this application.

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

Has the landlord proved on the balance of probabilities that they have 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? Is the tenant entitled to recover the filing fee?

#### **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 2008 (neither party remembered the date), it is now a month to month tenancy, rent is \$1356 a month and a security deposit of \$625 was paid in 2008.. The landlord served a Notice to End Tenancy for he said the tenant had done extraordinary damage to the property and had not done the required repairs. He said there was drywall damage, garage drywall damage and carpets stained by pets. The tenant had painted walls in patches and in different colours. He asked her to repair and she said at first she would do it but then refused and said she would do nothing until the house was sold.

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The tenant denied she refused to repair damage. She said she would have done it when finances allowed but no one told her the house was being sold. She said there was no condition inspection report done at move-in; she had paid for lawn maintenance herself at a cost of \$750 and paid a further \$790 for cleaning when she moved. She said she vacated on September 1, 2016 and the landlord promised to refund her one month's rent if she did this but now he refuses to do this. She also wants her security deposit refunded.

The landlord said he had made an offer if she signed a Mutual Agreement to End Tenancy but she refused unless she got her security deposit back so the offer was withdrawn. The tenant said this is wrong, there were no conditions. Her father gave sworn evidence also that the landlord told him on September 1, 2016 that he would take care of the promised money tomorrow and did the move-out report. He did not know about damage. Both the tenant and her father said the landlord was selling the house but the tenant did not receive any two month notice to end her tenancy.

Both parties cited emails they had exchanged on the offer but none are in evidence. There is no documentary evidence submitted. The landlord said he tried to file some evidence but the office of the Residential Tenancy Branch said the matter was resolved by the tenant vacating and there was no monetary claim so it would be pointless. He said he has filed an Application to claim damages and the tenant would have an opportunity at that hearing to provide any evidence and to possibly file a cross application to claim against him.

On the basis of the solemnly sworn evidence presented for the hearing, a decision has been reached.

## Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. Although the tenant said she did not refuse to repair damages, she agreed she had not done it as the owner seemed to be selling the house. On the weight of the evidence heard today, I find the landlord had cause to end the tenancy and the tenant has already vacated the premises. I dismiss the application of the tenant to cancel the Notice to End Tenancy.

The tenant wanted to discuss a possible monetary claim against the landlord. However, she did not make this claim on her Application and had submitted no documentary evidence to support it. Under the Principles of Natural Justice, I find a person has the right to be notified of a claim against them and the opportunity to respond to it. I find the

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landlord was not notified of this claim and had no opportunity to provide evidence in response. I dismiss this portion of the tenant's Application.

The landlord states that he has filed an Application to claim damages against the tenant. As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The tenant was advised to make her monetary claim on an Application against the landlord and request it be heard at the same time as the landlord's application. The parties were cautioned to provide evidence to support their claim.

I dismiss the application of the tenant to cancel the Notice to End Tenancy.

#### **Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. No filing fee is awarded due to her lack of success. The tenancy was at an end on August 31, 2016 and the tenant has already vacated. The landlord does not request an Order of Possession.

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: September 14, 2016

Residential Tenancy Branch