



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC MNDC LRE LAT OPC FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. The Notice to End Tenancy is dated August 23, 2016 to be effective September 30, 2016 and the tenant confirmed it was served by mail. The landlord confirmed he received the Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. 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) Compensation for continual disruption of his peaceful enjoyment contrary to section 28;
- c) To suspend or set conditions on the landlord's entry to the suite pursuant to section 29;
- d) To authorize the tenant to change locks pursuant to section 31; and
- e) To recover the filing fee.

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

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief?

Has the tenant proved on a balance of probabilities that he is entitled to compensation for disturbance of his peaceful enjoyment, that the landlord's rights to enter should be suspended, that he should be authorized to change locks and that he is 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 December 1, 2012, it is now a month to month tenancy, rent is \$1350 a month and a security deposit of \$675 was paid November 4, 2012. The landlord served a Notice to End Tenancy for the following reasons:

- a) The tenant or a person permitted on the property by him
  - (i) has seriously jeopardized the health or safety or other lawful right of another occupant or the landlord
  - (ii) has put the landlord's property at significant risk; and
- b) The tenant has caused extraordinary damage to the unit, has not done required repairs and has breached a material term of the tenancy agreement that was not corrected within a reasonable time.

The landlord provided in evidence a letter from the Strata regarding Bylaw infractions in the unit. There was plastic on the windows and some items stored outside. The tenant said he corrected the problems by the date given on the Notice. The landlord did not know and had no evidence to show the tenant had not corrected the problems.

The landlord alleged extraordinary damage had been done by the tenant installing an air conditioner without permission. The tenant said he did not install an air conditioner. He has one inside the unit which can be connected to outside air by inserting a plastic strip on the window. He provided photographs illustrating there was no damage or modifications to the window and that the plastic strip is merely inserted and is removable. The landlord kept contending there was damage; he did not seem to understand how these units work.

The landlord alleged the tenant kept the unit very messy and it had a stained carpet with the tenant's construction boots on it. The tenant said the carpet was stained when he rented the unit and provided a move-in report to show this.

The tenant states the Notice should be set aside as there are no grounds for it. He alleges his peaceful enjoyment has been significantly disturbed by the landlord who wants to enter his unit to inspect when he is not there. He believes the landlord should not have the right to do this. He said he invited the agent of the landlord to inspect when he brought the warning letter but the agent refused. In evidence are many emails between the parties a warning letter, photographs and the Notice to End Tenancy.

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

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**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. I find the landlord has provided insufficient evidence of cause to end the tenancy. I find the weight of the evidence is that the tenant corrected the two issues required by the Strata; the landlord

provided no evidence to rebut the tenant's assertion. I find insufficient evidence that the tenant did extraordinary damage to the property. I find the evidence is that the landlord does not understand the portable air conditioner and that no holes are required in the window. I find the carpet was stained when the tenant moved in and I find insufficient evidence that the tenant has caused further damage to it or to the unit. As I find insufficient evidence to support the Notice to End Tenancy, it is cancelled and the tenancy continues.

In respect to the tenant's monetary claim, I find it is based on his claim that the landlord is significantly disturbing his reasonable enjoyment contrary to section 28 of the Act. As evidence of harassment, he provided evidence that the landlord wanted to do inspections which the tenant considered unnecessary and did not want to consent to, the Warning Letter delivered by an agent, a Cease and Desist Agreement which the tenant composed and wanted the landlord to sign requiring the landlord to "agree to stop harassing and intimidating behaviour and communications which are in violation of [the tenant's] rights". The tenant also gave oral evidence that he considered the Notice to End Tenancy without cause is another violation. After considering the emails between the parties, I find much of the alleged harassment is based on the landlord wanting to enter the unit for inspection and the tenant's misunderstanding of section 29 of the Act. As pointed out in the hearing, section 29 gives the landlord right to enter the premises with or without the tenant's consent provided a written 24 hour notice to enter is given to the tenant stating the purpose which must be reasonable. I find this does not have to be on an official form but must be written. The landlord has a right to do a monthly inspection. I advise both parties to read section 29 of the Act regarding the landlord's entry into the unit.

I find insufficient evidence of harassment or intimidating behaviour of the landlord. I find the landlord was asserting his legal rights to enter the unit for inspection and to serve a Notice to End Tenancy when he believed he had just cause. I find the landlord's emails were generally polite in his requests whereas the tenant's emails were quite abusive. I find the tenant not entitled to compensation or a rent rebate as I find the landlord's assertion of his legal rights is not harassment or intimidation of the tenant. I dismiss the tenant's claim for compensation for harassment or intimidation.

I find insufficient reason to give the tenant permission to change the locks pursuant to section 31 of the Act. I find no evidence of unlawful entry. I find the landlord is limited by section 29 of the Act for entry into the tenant's unit and as discussed in the hearing, must abide by the conditions in section 29. I find the tenant must likewise permit such inspections when done in accordance with that section and as pointed out in the

hearing, he does not have to give consent or be home if the landlord serves the requisite 24 hour notice to inspect.

I dismiss the tenant's claim for other costs of the Application such as mailing as my jurisdiction is limited by section 72 of the Act to the cost of the filing fee.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated August 23, 2016 is hereby set aside and cancelled. The tenancy is continued. I find the tenant entitled to recover his filing fee of \$100 for this Application. I dismiss the Application of the tenant for monetary compensation for the reasons stated above without leave to reapply.

**I HEREBY ORDER that the tenant may recover his filing fee by deducting \$100 from his monthly rent.**

**I HEREBY ORDER that the landlord and the tenant both obey the conditions in section 29 of the Act regarding inspection.**

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: October 26, 2016

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Residential Tenancy Branch