



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, ERP, RP, RR, LRE, OLC, FF

### Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause; orders for the landlord to make repairs, including emergency repairs; orders for the landlord to comply with the Act, regulations or tenancy agreement; authorization to change the locks; and, authorization to reduce rent payable. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

Two co-tenants were named as tenants on the tenant's Application for Dispute Resolution. The landlord stated that the tenancy agreement started approximately 7.5 years ago and only reflects one tenant. The person appearing as tenant at the hearing (referred to by initials KB) stated that her father was already residing in the rental unit when she and her mother moved in with her father approximately four years ago. I noted that the 1 Month Notice that is before me names only one tenant. I was satisfied that KB's father is named as the tenant on the tenancy agreement but I was unsatisfied that KB has standing as a tenant. I have amended the Application to name only one tenant, KB's father. I have considered KB to be an occupant and agent of the tenant.

I determined that the landlord had served the tenant with some of the documents submitted to the Residential Tenancy Branch but the landlord did not serve other portions to the tenant. I confirmed with KB as to the materials that were received from the landlord. The landlord acknowledged that the documents that were not served upon the tenant were irrelevant to the matters at hand. I questioned the landlord as to the reason he would submit irrelevant materials to me to which the landlord replied "so you can see what I have been dealing with at the property". I did not admit or further consider the documents that were not served upon the tenant.

The tenant had indicated multiple issues and sought multiple remedies in filing this application. Rule 2.3 of the Rules of Procedure provides that: "claims made in the

application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.” Since the hearing time is limited, I confirmed with KB that the most pressing issue to resolve is the disputed 1 Month Notice to End Tenancy. KB also identified a second urgent matter: authorization to change the locks due to unlawful entry by the landlord. I dealt with these two matters and dismissed the other matters with leave to reapply.

### Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause dated February 1, 2017 be upheld or cancelled?
2. Has the tenant established the landlord has entered the rental unit unlawfully and a basis for changing the locks?

### Background and Evidence

The tenancy started approximately 7.5 years ago. The tenant is currently required to pay rent of \$840.00 on the first day of every month. Approximately four years ago, KB and her mother (referred to by initials SB) moved into the rental unit with the tenant.

### **1 Month Notice to End Tenancy for Cause**

The landlord served a 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) upon the tenant by placing it in the tenant’s mail slot on February 1, 2017. The 1 Month Notice has a stated effective date of March 1, 2017 and indicates three reasons for ending the tenancy, as follows:

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- Tenant has engaged in illegal activity that has or is likely to damage the landlord’s property
- Tenant has caused extraordinary damage to the unit or property.

Upon review of the 1 Month Notice with the landlord the landlord stated that he is not asserting that the tenant has engaged in illegal activity. Accordingly, I did not consider the second reason further and focused on the other two reasons indicated on the 1 Month Notice.

*Unreasonable disturbance and or significant interference*

The landlord testified that the tenant leaves the balcony door open when they tenant and occupants are out, permitting their dog on the balcony, and the dog barks. The landlord stated he received complaints from other tenants. The landlord testified that he verbally told the tenant of this issue numerous times, with the last time being approximately one year ago.

The landlord stated the tenant's dog is aggressive toward other tenants or other tenant's dogs in the common areas.

KB acknowledged the landlord spoke to them on two occasions about the dog barking but that they no longer leave the door open for the dog when they are out. KB stated that there is a dog living in the unit above theirs and that dog barks too, causing the tenant's dog to bark in return.

KB stated that their dog is always on a leash and if they approach another dog that their dog does not like they keep the dogs separated.

KB pointed out that this is an old issue, as evidenced by the landlord's last warning being a year ago. The landlord responded by stated he had given up.

#### *Extraordinary damage*

The landlord initially raised repair issues that I did not consider extraordinary damage to the rental unit or property (such as a broken lever on the toilet and an oven door that had to be reinstalled in years prior) and I have only reflected the two significant and likely costly repairs that were made or should be made.

The landlord testified that in mid-August 2016 water was flooding into the storage room on the lowest floor. The landlord investigated the leak by going to the unit below the rental unit and found a water bubble in the ceiling of that unit. The landlord proceeded to enter the rental unit and found the tenant showering with a broken shower hose that was spraying water on the ceiling and walls and running down to the floor. The landlord pointed out the tenant had not reported a broken shower hose to the landlord.

The landlord testified that the tenant's dog has urinated on the laminate flooring, causing damage to it. The landlord described seeing dog diapers all over the floor of the rental unit. The landlord could not provide dates as when he noticed the diapers or damaged flooring but said he noticed it "periodically" when he had been in the rental

unit. The landlord asserted that the tenant and the occupants are usually out and do not take the dog out enough and leave it to pee on the floor.

KB testified that the shower hose was not spraying water as described by the landlord. Rather, KB described how the landlord entered the rental unit, proceeded to enter the bathroom while her father was showering and even opened the shower curtain while her father was showering. KB stated that their ceiling also had a water bubbles and the landlord punched a hole in their ceiling to investigate. KB stated the building has been plagued by many water leaks. KB attributed the water leak in the unit below the rental unit and in the storage room to the plumbing leaks.

KB testified that their dog is walked three times a day and that when they are out they leave a pee pad out for the dog to use if necessary. KB attributed the damage to the laminate floor to the plumbing leaks in the building. KB pointed out that water bubbles have formed in their ceiling and continue to do so.

The landlord acknowledged that there were significant leaks in the building but claims they were fixed a few years ago so any leaks that happen now must be from water overflowing a toilet or bathtub.

I asked the landlord why he waited so long to issue the Notice to End Tenancy since the issues he has described were several months, if not years, prior. The landlord described himself as having a "big heart" but that the tenants have disrespected him and SB has given him dirty looks.

KB pointed out that the water damage occurred quite some time ago and attributed the landlord's decision to issue an eviction notice to a more sinister reason. According to KB, the landlord has made abusive and racist remarks to the occupants of the building including statements to the effect: "go back to our fucking country" and "you are my servants so I don't need to respect you, and you better learn to talk to me with respect" and that he "hated Indian women". The tenant submitted a letter written by another occupant of the building in support of these allegations. KB stated that when her mother, SB, went to pay the February 2017 rent she told the landlord to stop being so rude. According to KB, the landlord responded by telling SB that he would evict them and that he would find a reason to do so. KB stated that 10 minutes after her mother paid the rent the 1 Month Notice was put in their mail slot.

The landlord responded by stating he did not say he "hated Indian women" but that he said he "has a problem with Indian women" because he has had problems with "Indian women".

## **Unlawful entry**

KB submitted that the landlord has entered the rental unit numerous times without permission or giving a notice of entry, including the time he entered in August 2016 while the tenant was showering. KB is most concerned when the landlord enters the rental unit while they are out because their dog is at home. KB submitted that the landlord has called their dog “little bitch”.

The landlord acknowledged he has entered the rental unit numerous times without giving notice. The landlord was of the position that he may enter a rental unit once a month without giving notice, or if he has knocked first, or if the tenant has told him there is a repair issue. I informed the landlord that he was incorrect and advised him of his requirements under section 29 of the Act. I informed the parties that I would order the landlord to comply with section 29; however, the landlord continued to make excuses for entering without consent or notice, such as in cases where there is a plumber on site. It was apparent to me that the landlord was either unwilling or refusing to understand his *restricted* right to enter. During the hearing, I informed the parties that I was authorizing the tenant to change the locks to the rental unit and that I was authorizing the tenant to deduct the cost from rent payable. Further, the tenant is not required to give a copy of the new key to the landlord. The landlord enquired as to what he is to do in the case of an emergency. I informed the landlord that in an emergency he would have to enlist the services of a locksmith and absorb the cost to do so.

## Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

### **1 Month Notice to End Tenancy for Cause**

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

In this case, it is undisputed that there was water leaking into the unit below the rental unit and there is water damage to the laminate flooring in the rental unit. I also heard consistent testimony that there have been water leak issues in the building in the past and that there had been plumbers working on the plumbing system in the building. However, the parties provided opposing evidence as to the cause of the water leak that

occurred in the unit below the rental unit in August 2016 and water damage to the laminate floor in the rental unit.

Considering the water damage occurred several months, or even years prior to issuance of the 1 Month Notice; opposing positions as to the cause of the water damage; and, testimony that the building has or is currently experiences problems with the plumbing system, I find the landlord has not persuaded me that the cause of the water damage is attributable to the tenant's actions or neglect. I am of the view that where a landlord is of the position a tenant has caused extraordinary damage to a rental unit or property that the landlord would not wait several months or longer to take action against the tenant. Of further consideration is that KB put forth an ulterior motive for the landlord's issuance of the 1 Month Notice and upon hearing from the landlord during the hearing I took note of his racist view of women of a particular ethnicity or place of origin. Therefore, I find, on a balance of probabilities, that the 1 Month Notice as issued out of retaliation more than anything else and I cancel it.

The landlord is also cautioned that harassment or persecution of a tenant may be a basis to find breach of quiet enjoyment and put the tenant in a position to seek further remedy against the landlord, including monetary compensation. Both parties would be well served to familiarize themselves with section 28 of the Act, which provides for a tenant's right to quiet enjoyment. Residential Tenancy Policy Guideline 6: *Entitlement to Quiet Enjoyment* provides further information on this subject.

### **Unlawful entry**

KB submitted that the landlord has entered the unit unlawfully on numerous occasions. The landlord's own testimony confirmed this to be the case. Despite informing the landlord of his *restricted* right to enter a rental unit, as provided under section 29 of the Act, during the hearing the landlord continued to make excuses for entering without notice or consent.

Section 70(2) of the Act provides as follows:

- (2) If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may
  - (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and

- (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit

Upon hearing from the landlord, I have little confidence that the landlord would abide by an order to comply with section 29 of the Act. Therefore, I order the landlord to comply with section 29 of the Act and I authorize the tenant to change the locks to the rental unit without giving the landlord a copy of the key as provided under section 70(2)(a) of the Act. Further, as provided under section 70(2)(b), the landlord is prohibited from changing the locks to the rental unit during the tenancy. The landlord must make an Application for Dispute Resolution if he seeks to have this order changed in the future.

In the case of a true and legitimate emergency, the landlord may gain entry by enlisting the services of a locksmith but must not have the locksmith alter the lock or make the landlord a key for the lock. The cost to hire a locksmith shall be that of the landlord.

As provided under section 65(1)(b) of the Act, I authorize the tenant to deduct the cost to change the locks to the rental unit from the rent otherwise payable upon providing the landlord with a copy of the receipt for installation of a new lock.

Below, I have reproduced sections 28 and 29 of the Act for both parties' further reference (with my emphasis underlined).

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

During the hearing, the landlord spoke of monthly inspections. For added clarity, section 29(2) gives the landlord the right to inspect the rental unit up to once a month but gaining the tenant's permission at the time of entry or giving the tenant a written 24 hour notice is still required before the inspection may take place.

Since the tenant was successful in this application, I award the tenant recovery of the \$100.00 filing fee paid for this application. I authorize the tenant to deduct \$100.00 from a subsequent month's rent to satisfy this award.



Conclusion

The 1 Month Notice dated February 1, 2017 has been cancelled and the tenancy continues.

I have cautioned the landlord that he is required to comply with section 28 of the Act. I have ordered the landlord to comply with section 29 of the Act.

I have also authorized the tenant to replace the locks to the rental unit, without giving a key to the landlord. I have authorized the tenant to deduct the cost of the new locks from rent otherwise payable upon providing the landlord with a copy of the receipt for installation of the new locks. The landlord has been prohibited from changing the locks to the rental unit during the remainder of the tenancy unless the landlord files an Application for Dispute Resolution and seeks authorization from an Arbitrator to do so.

The tenant has been awarded recovery of the filing fee paid for this Application and is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

The remainder of the remedies sought by the tenant by way of this Application were dismissed with leave to reapply.

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: March 08, 2017

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Residential Tenancy Branch