



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, CNC, MNDC, LAT, FF, O  
OPC, MNR, MNSD, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing an additional rent increase; for an order cancelling a notice to end the tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the tenant to change the locks to the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the testimony and evidence provided. No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties advise that another hearing is scheduled in a few weeks concerning the landlord's application for an Order of Possession for cause, for a monetary order for unpaid rent or utilities for an order permitting the landlord to keep the security deposit; and to recover the filing fee from the tenant.

The parties agreed that not all of the applications contained in either of the Landlord's Application for Dispute Resolution or the Tenant's Application for Dispute Resolution is related to the primary applications, which are the landlord's application for an Order of Possession and the tenant's application for an order cancelling a notice to end the tenancy, both of which involve the same 1 Month Notice to End Tenancy for Cause. Therefore, I ordered that the applications be joined to be heard together, and that the first day of the hearing focus only on the notice to end tenancy for cause, and the balance of both applications will be heard on the date scheduled for the landlord's application.

During the second day of the hearing, the tenant withdrew the application for an order permitting the tenant to change the locks to the rental unit.

### Issue(s) to be Decided

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?
- Has the tenant established that rent has been increased contrary to the *Residential Tenancy Act* and the regulations?
- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for overpayment of hydro?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on July 1, 2016 and expires on July 1, 2017 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,900.00 per month is payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,900.00 which is still held in trust by the landlord, and no pet damage deposit was paid; pets are not permitted. The rental unit is a cottage with 2 bedrooms in the upper level and 1 bedroom in the lower level. A copy of the tenancy agreement has been provided, however no move-in condition inspection report was completed.

The landlord further testified that she served the tenant with a 1 Month Notice to End Tenancy for Cause on January 20, 2017 by posting it to the door of the rental unit, and a copy has been provided. It is dated January 20, 2017 and contains an effective date of vacancy of March 3, 2017. The reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- put the landlord's property at significant risk.

The landlord further testified that the tenant continually pays rent on the 2<sup>nd</sup> or 3<sup>rd</sup> of each month, has allowed rent cheques to be returned for insufficient funds and is currently in arrears of rent the sum of \$2,000.00 for February and March, 2017, having only paid \$900.00 for each of those months. Also, the tenant only paid \$278.56 on December 18, 2016 saying that the tenant had deducted \$621.44 for hydro reimbursement.

The tenant also paid rent late for November, 2016, having paid \$900.00 on the 4<sup>th</sup> of the month which was returned for insufficient funds. The tenant paid the landlord in cash at a later date, but only \$900.00. The rent cheque for October, 2016 also bounced.

The landlord also testified that the rental unit has a wooden deck all around it with gates. The tenant put cables and locks on both gates so the landlord cannot gain entry. The tenant works out of town for 2 weeks at a time and leaves the heat low, which has caused the landlord significant distress about possible freezing pipes.

The landlord also testified that the parties had discussed hydro and rent, and the tenant expected the landlord to pay a large part of hydro. The tenant had switched hydro into her name on July 11, 2016. The landlord contacted Fortis Electricity who confirmed that, and advised the landlord that the hydro bill needed to be paid. The landlord talked to the tenant who said that she wasn't going to pay the hydro bill, and the tenant became verbally abusive toward the landlord.

On the second day of the hearing the landlord testified that the parties had a tenancy agreement for \$1,900.00 per month, and the tenant used the basement area as an office and a gym. The tenant couldn't afford the rent so asked if she could get a roommate. The tenant found a friend to move into the basement, and the landlord agreed. The tenant was away often and asked the landlord to collect rent. After the friend moved in, the landlord agreed to only collect \$1,800.00 per month, being \$900 from each person, at the tenant's request who didn't think she should pay more than her friend. The landlord agreed to \$900.00 per month from the tenant plus utilities. The landlord does not have a tenancy agreement with the tenant's friend.

The tenant's friend moved in on September 13, 2016 and moved out on January 13, 2017. The tenant had control of the heat, found the upper area to be too hot so kept turning down the heat and froze her friend out. The landlord told the tenant's friend to talk to the tenant about it; it was between them and not the landlord. The landlord had

furnace work done and the hot water tank replaced, and heat wasn't used until September. After the heat was repaired, the tenant still kept the temperature low in the rental unit. Pipes froze 3 times and the landlord was to make arrangements to have them repaired, however the tenant's friend called angrily giving notice to end the tenancy, then the next day in writing. The landlord does not know when the friend gave any notice to the tenant of her intent to vacate.

The landlord also testified that the tenant has failed to pay utilities, is late with the rent, has bounced rent cheques, and has left the rental unit unchecked except for once per week on Mondays. The landlord was very worried about freezing pipes for insurance reasons. The tenant has been locking the gates to the rental unit preventing the landlord from accessing for scheduled work.

The landlord seeks an Order of Possession as well as rent for February and March in the amount of \$900.00 for each of those months, recovery of the \$100.00 filing fee and to keep the \$1,900.00 security deposit in full satisfaction of that claim.

**The landlord's witness** testified that he is a friend of the landlord, and is a retired contractor. The witness was present when the 1 Month Notice to End Tenancy for Cause was served. The witness saw the landlord tape the notice to the door of the rental unit on December 20, 2016.

On the second day of the hearing the landlord's witness testified that locks and cables were put on the gates of the rental unit by the tenant or the tenant's friends. The back gate has a chain with a lock and the front has a bicycle type of cable with a lock. On March 6, 2017 the witness went to the rental unit to put a notice on the door and found the locked gates. He climbed over a gate and taped a notice to end the tenancy to the door of the rental unit. A notice to enter to decommission the kitchen in the lower level of the rental home was placed in the mailbox. The decommissioning of the kitchen has been completed except that painting is still required and a new doorway has to be installed, insulation and a window need replacing. The landlord had to have the stairwell opened up to make it one unit, as required by the City. Hydro for the stove had to be removed by an electrician and the hood fan was taken out.

The witness also testified that as far as he is aware, the tenancy was for a complete house, and whether or not the lower level contained an illegal suite was none of his business.

**The tenant** testified that the rental amount of \$1,900.00 per month was based on the fact that the lower level of the rental home could be rented, but the tenant soon realized that it was an illegal suite. The tenant pulled records from the City to confirm that, and

advertised. Two people looked at the lower level to rent, but wouldn't rent it in the condition it was in. The tenant told the landlord about that who replied that she could easily rent it and the parties talked about how that would work. The conversation took place in mid-August and the tenant's conscience wouldn't allow the tenant to rent the lower level.

The landlord agreed that the tenant would pay \$900.00 per month and the landlord would rent the bottom suite for \$900.00, however after a couple of weeks no renter was found. An acquaintance of the tenant was looking for a place and the tenant told her to contact the landlord. The acquaintance and the landlord made their own arrangement and the landlord collected rent directly from that tenant, commencing September 15, 2016. The parties did not change the tenancy agreement.

The tenant paid rent in the amount of \$900.00 by cheque on October 1, 2016 which cleared the tenant's financial institution on October 3, 2016. The tenant also paid \$900.00 by cheque on November 1, 2016 which cleared the tenant's financial institution on November 4, 2016. The tenant delivered cheques to the landlords' home, which is in close proximity to the rental unit.

The tenant further testified that the landlord has not provided any compensation to the tenant for the cost of hydro to heat the basement. The tenant contacted the Residential Tenancy Branch who advised that the tenant could make an adjustment on rent, so the tenant calculated the amount from the hydro bill, calculating that the basement unit would pay 2/3 of the tenant's hydro for only the 2 month period that the renter was there. The tenant also called Fortis electricity who calculated the amount from October 25 to December. The tenant then paid rent for December on December 18, 2016 in the amount of \$278.56 after making those adjustments.

The tenant denies repeated late rent, and that the only rent that was late was in December, 2016, although since January 1, 2017 was a statutory holiday, the tenant paid rent in the amount of \$900.00 in cash. February's rent was also paid in cash and the landlord wrote a receipt stating that the tenant still owed \$800.00. The tenant mailed a cheque in the amount of \$900.00 to the landlord for March, 2017 but it has not yet been cashed.

The tenant also testified that she put cable on the gates that go to the upper suite only. The furnace is in the lower level as well as the electrical panel, which the tenant has no access to.

On the second day of the hearing the tenant testified that the water lines froze a lot and the wall that those pipes ran through was not insulated well enough. The landlord took

apart that wall and found a huge void of insulation and exposed pipes. It was very cold in the lower unit, which was not a legal suite. The \$904.56 hydro bill is very high due to having another tenant in the basement. The tenant has provided a breakdown of the hydro bills and the tenant's fair share. The bill for the billing period of August 22 to October 24 the tenant claims \$525.20, which is more than half because the tenant had no heat on for a long time. Once it was repaired, the landlord had the electric wall heater disconnected, so now 2 other heaters and the fireplace are used. Then when there was heat, the tenant had to have it on too high for her rental unit but the downstairs tenant had little heat and had to have extra electric heaters on. The tenant claims that the tenant downstairs used 2/3 of the hydro. The tenant works nights and wasn't home a lot, so didn't use any power.

When the tenant downstairs moved out, Fortis did an adjustment showing that from December 22 to January 23, the sum of \$522.90 will be payable, and the tenant is asking to be reimbursed \$242.88. All bills have been paid by the tenant except the last one has not yet been received.

The tenant withdraws the application for an order permitting the tenant to change the locks that give access to the rental unit, and seeks an order cancelling the notice to end the tenancy as well as compensation in the amount of \$904.56.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reasons for issuing it are in dispute.

The first reason for issuing the 1 Month Notice to End Tenancy for Cause is for repeated late rent. The parties agree that a tenancy agreement was signed by the tenant on July 8, 2016 for a fixed-term tenancy to begin on July 1, 2016 until July 1, 2017 after which it reverts to a month-to-month tenancy, and for rent in the amount of \$1,900.00 per month payable on the 1<sup>st</sup> day of each month. Utilities are not included according to the tenancy agreement. The landlord testified that the tenant continually pays rent on the 2<sup>nd</sup> or 3<sup>rd</sup> of each month, has allowed rent cheques to be returned for insufficient funds and is currently in arrears of rent the sum of \$2,000.00 for February and March, 2017, having only paid \$900.00 for each of those months. The notice to end the tenancy is dated January 20, 2017, and therefore I cannot consider February or March as evidence that it was issued for repeated late rent. However, the landlord testified that the rent cheques for October and November, 2016 were returned for

insufficient funds. The tenant disputes that. The landlord has provided no evidence to support that testimony. Where it boils down to one person's word over another, it has not been proven. The landlord has also provided evidentiary material showing that rent for March could not be certified, but that was also well after the notice to end the tenancy was issued.

There is no dispute that rent for December, 2016 was late. In order to be successful in ending a tenancy for repeated late rent, the landlord must be able to establish at least 3 late payments. The landlord has not done so in this case, and I cannot accept that repeated late rent is a reason for ending this tenancy.

With respect to the other reasons for ending the tenancy according to the 1 Month Notice to End Tenancy for Cause:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk,

the landlord testified that the tenant works out of town for 2 weeks at a time and is home for 1 week at a time. The tenant has locked the landlord out of the rental unit by attaching cables and locks on the gates, which has caused the landlord significant distress about possible freezing pipes. The tenant didn't dispute any of that testimony, but testified that the landlord can gain access and did so in order to serve the notice to end the tenancy. Although there is nothing in the *Act* requiring a tenant to have someone check on property when the tenant is away, the tenant is required to maintain reasonable standards. Further, the tenant is and has been well aware of the freezing pipes. In the circumstances, I find it very unreasonable that the tenant would lock gates, deny entry and decline to communicate with the landlord, and that the tenant has seriously jeopardized a lawful right of the landlord to make repairs as required which may put the landlord's property at significant risk. I also consider the undisputed testimony of the landlord that the tenant in the lower level moved out due to lack of heat and the tenant had full control but left the thermostat on low, causing significant interference with the tenant in the lower level. The tenant's application for an order cancelling the 1 Month Notice to End Tenancy for Cause is hereby dismissed, and I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

With respect to the landlord's claim for unpaid rent, it is important to determine what if any other agreements were made between the parties or the person who moved into the rental home. The landlord testified that she had no tenancy agreement with that person and acted as cashier only for a sub-tenant of the tenant. The tenant disputes that claiming that the landlord had a tenancy agreement with that person which changed the tenant's tenancy agreement effective on the date that the other person moved in. No written tenancy agreements with the other person exist either as a tenant of the landlord or a sub-tenant of the tenant, and the landlord relies on the tenancy agreement made with the tenant on July 8, 2016.

I have reviewed the evidentiary material of the parties, and particularly the text messages exchanged between the landlord and the other person who moved into the lower level. Those messages are not dated but confirm that the landlord held a security deposit for that tenant, and that tenant provided a forwarding address to return it to. The landlord replied about an inspection and carpeting. I accept that the landlord believed that the original tenancy agreement still existed and that the landlord acted as "cashier" for the tenant who sub-leased the lower level, however by virtue of collecting rent and a security deposit, and by acknowledging responsibilities of a landlord and a tenant with that person, the landlord has entered into a tenancy agreement with that person.

The landlord testified that she had suggested to the tenant that the tenant pay \$900.00 per month in addition to the utilities and that the person in the lower level pay \$1,000.00 per month rent. The tenant testified that the other person moved in on September 15, 2016 and landlord agreed that the tenants would each pay \$900.00 per month rent. I cannot fathom why a landlord would reduce rent from \$1,900.00 per month plus utilities to \$900.00 per month for one unit and \$1,000.00 for the other unless the tenant paying \$900.00 per month was responsible for the payment of utilities, in accordance with the original tenancy agreement.

I find that the tenant is responsible for the payment of rent of \$900.00 per month commencing October 1, 2016 in addition to utilities. The tenant has taken the liberty of reducing rent by \$621.44 for a hydro bill, which I find is owed to the landlord. The tenant has also provided a copy of a receipt from the landlord dated January 4, 2017 for January's rent in the amount of \$900.00. The landlord has provided a copy of a receipt dated January 30, 2017 for February's rent in the same amount. The tenant testified that a rent cheque for \$900.00 was mailed to the landlord but not yet processed as of the date of this hearing, and I find that the landlord is entitled to that rent.

With respect to the tenant's application for monetary compensation for damages, the onus is on the tenant to establish that the tenant has suffered a loss as a result of the



landlord's failure to comply with the *Act* or the tenancy agreement, the amount of the loss and what the tenant did to mitigate the loss suffered. The tenant claims \$904.56 for overpayment of hydro and has provided a break-down. Where a landlord requires a tenant to pay heating costs for another tenant, that term may be considered unconscionable. I also consider that the tenant agreed to pay for the utilities when the original tenancy agreement was signed in July, 2016, and that extra utilities would obviously be used with an additional tenant.

The tenant's breakdown of costs include a billing cycle from August 22 to October 24, 2016 in the amount of \$272.16 and claims half of that, or \$136.08. The tenant in the lower level didn't move in until September 15, 2016, and therefore, I find that the tenant is responsible for all utilities to that date. In doing the math by days, \$272.16 divided by 64 days is \$4.25 per day. The tenant in the lower level was there for 40 days, multiplied by \$4.25 per day is \$170.00. I accept that the landlord ought to pay for half of that amount, or \$85.00.

With respect to the next billing period, October 24 to December 22, 2016 in the amount of \$787.81, the tenant claims 2/3 for a total of \$525.20 because of issues with the insulation and frozen pipes. I am not satisfied that the tenant mitigated the loss and may have put the landlord's property at significant risk of freezing pipes, and the tenant has established a claim of half, or \$393.90.

I also find that the tenant ought to be reimbursed for the December 22, 2016 to January 23, 2017 hydro by half, or \$261.45.

Having found that the landlord is owed \$621.44 and the tenant is owed \$740.35, I set off those amounts and I grant a monetary order in favour of the tenant for the difference in the amount of \$118.91.

Since both parties have been partially successful, I decline to order that either party recover the filing fee.

The landlord currently holds a security deposit in the amount of \$1,900.00 in trust, which is more than permitted under the *Residential Tenancy Act*, however since the tenancy is ending, I order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*, which states:

**38** (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) *[tenant fails to participate in start of tenancy inspection]* or 36 (1) *[tenant fails to participate in end of tenancy inspection]*.

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

- (a) the director has previously ordered the tenant to pay to the landlord, and

- (b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

- (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

- (b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) *[landlord failure to meet start of tenancy condition report requirements]* or 36 (2) *[landlord failure to meet end of tenancy condition report requirements]*.

(6) If a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and

- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

## Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

The tenant's application for an order permitting the tenant to change the locks that give access to the rental unit is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$118.91.

I hereby order the parties to deal with the security deposit in accordance with Section 38 of the *Residential Tenancy Act*.

These orders are final and binding and may be enforced.

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 16, 2017

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Residential Tenancy Branch