



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      CNC, MNSD, OLC, RP, PSF, FF, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- recovery of the filing fees of this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the Act, I find that the tenant was duly served with the landlord's 1 Month Notice and evidence and the landlord was duly served with the tenant's application for dispute resolution package.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a return of the security deposit as claimed?

Should the landlord be ordered to make repairs to the rental unit or provide services or facilities required by law? Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to a recover the filing fee for this application from the landlord?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in August, 2013. The current monthly rent is \$1,450.00 payable on the first of the month. A security deposit of \$700.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a multi-floor townhouse in a strata development.

The landlord issued the 1 Month Notice on May 12, 2017. The landlord did not check off any of the boxes as the reason for issuing the one month notice but wrote in the Details of Causes that the landlord's father is moving into the rental unit on June 4<sup>th</sup>, 2017. The landlord testified that the date provided is the completion date of the landlord's father's property and the father is currently residing with the landlord until the rental unit is vacated.

The tenant testified that there is a leak in the bathroom drain and that he hears an audible sound of dripping in the walls and ceiling of the rental unit. He said that the leak has caused a discoloration to form on the ceiling below the area where he assumes the leak is. He said that he has informed the landlord on numerous occasions but no conclusive resolution has been provided.

The tenant said that he discovered that contractors hired by the strata management company replaced his door without his prior knowledge or approval. He said that it is the responsibility of the landlord to keep him informed of work being performed.

### Analysis

Section 47 of the *Act* provides that a landlord may end a tenancy on a date that is not earlier than one month after the date the notice is received if certain circumstances apply. A landlord or a landlord's close family member intending to occupy the rental unit is not one of the permitted circumstances in which a tenancy may be ended pursuant to this section of the *Act*. Furthermore, pursuant to section 52 of the *Act*, in order to be effective, a notice to end tenancy must state the grounds for ending the tenancy and be in the approved form.

Section 49 of the *Act* allows the landlord to issue a notice to end tenancy if a landlord or a close family member of the landlord intends to occupy the rental unit. The section further provides the requirements of a notice issued under this section and states that a notice must comply with the form and content requirement of section 52. If the landlord intended to end the tenancy for the reason cited the landlord ought to have issued a notice under section 49.

As I find that the landlord has not issued a notice to end the tenancy using the correct form for the reason provided I must find that the 1 Month Notice is cancelled and of no further effect. This tenancy will continue until ended in accordance with the *Act*.

As this tenancy is continuing the tenant is not entitled to recover the security deposit for this tenancy. The security deposit will be handled in accordance with the *Act* at the end of the tenancy. This portion of the tenant's application is dismissed.

I find the tenant has provided insufficient evidence in support of his claim that the landlord be ordered to comply with the *Act*, regulations or tenancy agreement and provide services or facilities, and repairs to the rental unit. The tenant provided little written evidence in support of his application. I find there is insufficient evidence to show the existence of a leak that requires repair. This portion of the tenant's application is dismissed.

The tenant argued that the landlord ought to communicate with the strata corporation and the on-site contractors on his behalf. I do not find that this is a duty that the landlord is obligated to perform on the tenant's behalf. The undisputed evidence of the parties is that the tenant was aware of the work being performed on the doors of the units in the strata. The tenant emailed the landlord stating that he would not be able to deal with the contractor. I find there was no obligation on the landlord to take over the communication with the strata and the contractor simply because the tenant couldn't be bothered to make arrangements. This portion of the tenant's application is dismissed.

As I have dismissed the majority of the tenant's application I find the tenant is not entitled to recover the filing fee for this application.

### Conclusion

The 1 Month Notice is cancelled and of no further effect. This tenancy will continue until ended in accordance with the *Act*.

The remainder of the tenant's application is dismissed without 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: July 12, 2017

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Residential Tenancy Branch