



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, MNDC, OLC, MNSD, FF

### **Introduction:**

The original Application for Dispute Resolution filed by the Tenant on May 1, 2018 seeks the following:

- a. An order that the landlord comply with the Act, Regulations and or tenancy agreement.
- b. An order to change the locks
- c. An order suspending or setting conditions on the landlord's right to enter.

On May 4, 2018 the Tenant filed an Amendment to her Application for Dispute Resolution to add her 17 year old son as an applicant.

On May 4, 2018 the Tenant filed a second Amendment to her Application for Dispute Resolution to seek an order that the landlord comply with the Act, Regulations and/or tenancy agreement and provide the Tenant with a proper 2 month Notice to End Tenancy.

On June 5, 2018 the Tenant filed a third Amendment to her Application for Dispute Resolution to seek the following:

- a. An order to cancel a one month Notice to End Tenancy dated May 23, 2018 and setting the end of tenancy for June 30, 2018
- b. A monetary order in the sum of \$15,800.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Unfortunately there is a great deal of animosity between the parties. This is evidenced by the interaction between the parties during before and during the course of the hearing. It is further evidenced by the fact the index (single space) for the material uploaded by the parties is 18 pages in length. The parties are encouraged limit materials to what they will be raising in the hearing itself in future hearings. The parties were advised that materials uploaded do become evidence and that it only becomes evidence when it is dealt with and referred to in the oral hearing.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both

parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant on by posting on May 23, 2018. Further I find that the Application for Dispute Resolution/Notice of Hearing and the various amendments were sufficiently served on the Respondent.

Preliminary Matter:

Rule 2.3 and 6.2 of the Rules of Procedure provide as follows:

“2.3 Related issues

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.”

“6.2 What will be considered at a dispute resolution hearing

The hearing is limited to matters claimed on the application unless the arbitrator allows a party to amend the application.

The arbitrator may refuse to consider unrelated issues in accordance with Rule 2.3 [Related issues]. For example, if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hear other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

I ordered that this hearing be limited to the claims set out by the Tenant in the original Application for Dispute Resolution filed on May 1, 2018 and the claim to cancel the one month Notice to End Tenancy dated May 23, 2018. All other claims set out in the Application for Dispute Resolution and the amendment are dismissed with leave to re-apply. The reasons for this order are as follows:

- The other claims raised by the Tenant including her monetary claim are not related to the claim to cancel the Notice to End Tenancy and the claims filed in the first Application for Dispute Resolution.
- The amount of materials filed by the Tenant would make it impossible for an arbitrator to hear all the claims within the time scheduled.
- The Tenant’s application for a monetary order that exceeds \$15,000 and was filed on June 5, 2018 (just over 2 weeks before the hearing). The landlord would be a fair opportunity to prepare for the hearing had I permitted the monetary claim to continue at this time.

The landlord submitted the tenant's application for Dispute Resolution should be dismissed because of the late service of the June 5, 2018 Amendment of her. I determined the landlord was attempting to avoid service and that it was appropriate to hear the application to cancel the one month Notice to End Tenancy as that related to the other claims set out in the Application for Dispute Resolution filed by the Tenant on May 1, 2018. The monetary claim filed by the Tenant was dismissed with leave to re-apply for the reasons set out above.

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated May 23, 2018?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, Regulations and or tenancy agreement.
- c. Whether the tenant is entitled to an order to change the locks
- d. Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter.

Background and Evidence:

The tenancy began on August 1, 2014. The present monthly rent is \$1555 per month payable in advance. The tenant testified she paid a security deposit of \$777.50 and a pet damage deposit of \$777.50 prior to the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy dated May 23, 2018 relies on the following grounds:

- 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
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - jeopardize a lawful right or interest of another occupant or the landlord

The landlord gave the following evidence:

- The landlord testified the tenant intentionally turned of the breaker off on three separate occasions (April 25, May 28 and June 3) thereby preventing the landlord from doing what she wanted to do.
- On April 25 the landlord was cutting the lawn with her electric lawnmower. The exterior plug (the lawn mower was connected to this) and the bathroom are on the same circuit. She testified the tenant turned off the breaker thereby preventing her from using her lawnmower and grass trimmer and her son from taking a shower. Her deep freeze was full of food and also stopped working at that time.
- She knocked on the tenant's door for a long period of time but the tenant failed to answer. Eventually she gained access to the rental unit only to meet the tenant who was videoing the interaction.
- The breaker is high in the tenant's bedroom. When she gained access to bedroom the breaker was off. This occurred on 4 different occasions while she attempted to cut the grass.
- The landlord further testified that her appliances have been inspected by an electrician and they are in good working order and are not defective.
- The landlord attempted to give evidence relating to the turning off of the breaker on May 28, 2018 and June 3, 2018. I determined that while those incidents may be relevant to second Notice to End Tenancy they are not relevant to a consideration of the validity of a Notice to End Tenancy that was given at an earlier date. As a result I ruled the evidence relating to the later incidents was inadmissible in this hearing.

The tenant gave the following evidence:

- She categorically denied turning the breaker off at any time.
- She did not immediately respond to the landlord knocking on her door. She was in the bedroom and did not hear the knocking. She had just received a telephone from her sister in Ontario who advised her that her mother had just suffered a stroke and was in an ambulance on the way to the hospital. She was attempting to get as much information from her sister as possible.
- The tenant testified this does not amount to an emergency and the landlord had no right to enter her rental unit without her permission.
- The breaker box has the circuits numbered but does not identify which is the exterior circuit. She does not know what circuit was the circuit for the exterior plug.
- Two weeks prior to the incident she had broken her foot/ankle and was in a great deal of pain and was in an air boot. The breaker box is high on the wall and would require her to stand on a stool to turn a breaker off. That was not possible given her condition.

Analysis:

After carefully considering all of the evidence I determined the landlord failed to establish sufficient cause to end the tenancy. The landlord has the burden of proof to provide sufficient

evidence to establish grounds to end the tenancy on a balance of probabilities. I determined the landlord failed to provide sufficient proof for the following reasons:

- There is insufficient evidence to prove the tenant turned the breaker off.
- The tenant categorically denied turning the breaker off. Her explanation that it was been extremely difficult and therefore unlikely for her to turn the breaker off given the height of the breaker box and her broken foot. Further, I am satisfied that the receipt of a phone call from her sister in Ontario that her mother had just suffered a stroke is a sufficient explanation as to the delay in responding to the landlord knocking on the door.
- While there is a great deal of animosity between the parties the landlord failed to provide a sufficient explanation as to what might have provoked the tenant to turning the breaker off.
- The tenant's explanation of the use of the lawnmower and the drawing of the power with her son taking a shower at the same time is as logical explanation as the tenant intentionally turning the breaker off.
- The landlord failed to provide evidence of any illegal activity by the Tenant.

In summary I ordered that the one month Notice to End Tenancy dated May 23, 2018 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

Application for an Order that the landlord comply with the Act, Regulations and/or tenancy agreement, for an Order to change the locks and for an Order restricting or suspending the landlord's right to enter the rental unit.

Section 29 of the Residential Tenancy Act provides as follows:

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).

Section 70 the Residential Tenancy Act provides as follows:

Director's orders: landlord's right to enter rental unit

70 (1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [landlord's right to enter rental unit restricted].

(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.

After carefully considering all of the evidence I determined the tenant has failed to produce sufficient evidence to for an order suspending or setting conditions on the landlord's right to enter the rental unit or an order authorizing the tenant to change the locks for the following reasons:

- The tenant is relying on one incident where the landlord entered the tenant's rental unit after the tenant circuit breaker cut the power and the tenant failed to answer her door. In the circumstances I determined this amounts to an emergency situation as the problems could have been much more serious than merely the activation of a breaker. .
- The tenant failed to provide sufficient evidence in the hearing that there has been a history of the landlord illegally entering the rental unit. Both sides are extremely suspicious of each other. However, the evidence produced by the tenant at the hearing was insufficient to justify the orders that she was seeking.
- Section 29 has been set out above. The Act requires that a landlord comply with that section and it is not necessary to make such an order.
- The tenant failed to prove that the landlord is likely to enter the rental unit other than as authorized under section 29.

As a result I dismissed the Tenant's application for an order that the landlord comply with the Act, Regulations and/or tenancy agreement, for an Order to change the locks and for an Order restricting or suspending the landlord's right to enter the rental unit.

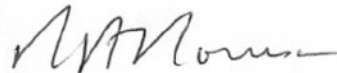
Conclusion:

I ordered that the Notice to End Tenancy dated May 23, 2018 be cancelled. I dismissed the tenant's claim for an order that the landlord comply with the Act, Regulations and/or tenancy agreement, for an Order to change the locks and for an Order restricting or suspending the landlord's right to enter the rental unit. All other claims set out in the various Amendments including the Tenant's monetary claim are dismissed with leave to re-apply.

**This decision is final and binding on the parties.**

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: June 22, 2018



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R.A. Morrison, Arbitrator  
Residential Tenancy Branch