



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPC, OPB, FFL, CNC, MNRT, MNDCT, OLC, RP, PSF, LRE, LAT, RR

### Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- 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;
- authorization to reduce rent for services or facilities not provided pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for 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 their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was assisted by their son CC. The male tenant primarily spoke on behalf of both co-tenants (the “tenant”).

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord’s 1 Month Notice dated May 18, 2018, the landlord’s application for dispute resolution dated June 18, 2018 and evidence. The landlord confirmed receipt of the tenant’s application for dispute resolution dated May 25, 2018 and evidence. Based on the undisputed testimonies of the parties I find that in accordance with sections 88 and 89 of the *Act*, the parties were duly served with the respective materials. .

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an order of possession?

Are the tenants entitled to a monetary award as claimed?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Should the landlord be ordered to make repairs to the rental unit or provide services or facilities?

Should restrictions be placed on the landlord’s right to enter the rental unit?

Is either party entitled to recover the filing fee for their application from the other?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties’ claims and my findings around each are set out below.

The parties were unable to agree as to when this tenancy started. The landlord said the tenancy began in December, 2016. The tenant disagreed and said the tenancy began in January, 2017. The monthly rent for this tenancy is \$1,480.00 payable on the first of each month. The parties submitted into evidence a copy of the written tenancy agreement which is a single page document prepared by the landlord and consisting of 18 items.

The rental unit is a detached home and the tenants occupy one of three rental units in the property. The written tenancy agreement is silent on the tenant's right to use the garage for the property. The tenant claims that it is included in the tenancy while the landlord submits that it is not.

The landlord served the 1 Month Notice on the tenants by posting on the rental unit door. The landlord indicated the reason for its issuance as:

*The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is like to:*

- *Damage the landlord's property.*
- *Adversely affect the quiet enjoyment, security safety or physical well-being of another occupant.*
- *Jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord listed three incidents on the notice. An instance where the landlord claims the tenant broke a lock and refused to share the garage, that the tenant installed a lock to prevent sharing the laundry and that the tenants place too many objects in the shared yard. The landlord confirmed that these are the three incidents which led to the issuance of the 1 Month Notice. The landlord characterized the tenant's behaviour and use of common areas of the property as illegal activities.

The tenant disputed the landlord's evidence generally. The tenant testified that the landlord has acted in a harassing and high-handed manner throughout the tenancy. The tenant testified that the landlord has come to the rental unit on multiple occasions without providing notice and has disrupted their ability to enjoy the rental unit.

The tenant submits that the rental unit requires multiple repairs which they have requested from the landlord but remain unattended. The tenant testified that the outstanding repairs include:

- Basement bathroom and ceiling leaks
- Broken gutters
- Replacing the main floor porch deck
- Complete window installation
- Bathroom fans not operating
- Drain vent in the basement kitchen not operating
- Replace or repair main floor heater vents

The landlord disputes the tenant's testimony and said that they have made repairs and maintenance in a timely and reasonable manner.

The tenant seeks a monetary award of \$4,000.00 for the loss of quiet enjoyment due to the landlord's interference and presence on the rental property. The tenant seeks an order that the landlord comply with the Act and not enter the rental property without providing notice in accordance with the *Act*.

The tenant's witnesses were past residents of other rental property owned by the landlord who testified that landlord entered their property on multiple occasions during their tenancy.

### Analysis

As the parties disagreed on most aspects of their respective testimonies, I must make a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is supported in independent evidence and consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Taken in its entirety, I find the evidence of the tenant to be more credible and persuasive than that presented by the landlord. The tenant presented cogent, consistent testimony that was supported in the documentary evidence submitted as well as the testimonies of the witnesses. The tenant presented their oral testimony in an organized manner, providing details that appeared to be genuine recollection of the facts. They were honest about the limits of their memory and where they could not recall salient facts were forthright and did not attempt to make assumptions.

In contrast, I found that the landlord to be a less reliable witness. The landlord's evidence was often contradictory and contained inconsistencies. The landlord was argumentative and evasive in response to questions put to them. The landlord would provide a statement which they would promptly contradict, revise or retract. Taken as a whole, I found the landlord to be an unreliable witness who focused their testimony on loudly disputing the evidence of the tenant without putting forth substantive arguments in support of their own version of events.

The landlord applies for an order of possession on the basis of a vacate clause in a fixed term tenancy. However, the tenancy agreement submitted into evidence does not include a vacate clause. In any event, pursuant to the Act, a clause requiring a tenant to vacate is unenforceable except in the specific circumstances prescribed. No evidence was provided that the circumstances set out in the Act apply to the present

case. I find that the tenancy agreement does not include a vacate clause and this portion of the landlord's application is dismissed accordingly.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that:

*The tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is like to:*

- *Damage the landlord's property.*
- *Adversely affect the quiet enjoyment, security safety or physical well-being of another occupant.*
- *Jeopardize a lawful right or interest of another occupant or the landlord.*

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. The landlord made some submissions about the tenant's behaviour but I find that there is insufficient evidence that the conduct warrants ending this tenancy. I find that there is insufficient evidence that the tenant or a person admitted onto the property have engaged in any illegal activities. The landlord's submissions and testimony consist of various complaints about the tenant's behaviour, demeanor and conduct but I find there is little relevant information in support of the reasons for the 1 Month Notice. I find that the landlord has failed to demonstrate on a balance of probabilities that the tenant's conduct has involved engagement in illegal activities that would give rise to the Notice to End Tenancy. Consequently, I allow the tenant's application and cancel the 1 Month Notice. This tenancy continues until ended in accordance with the *Act*.

I find that there is insufficient evidence in support of the tenant's application for a repair order. The disputed testimony of the tenant, screenshots of correspondence between the parties and some photographs are insufficient to conclude that the repairs sought by the tenant are necessary. Much of the tenant's testimony regarding the deficiencies were that they would cause noise and some discomfort. Some of the issues listed such as the bedroom window have been completed, simply not to the standards which the

tenant finds to be adequate. I find that there is little evidence that the state of the rental unit is such that it does not comply with reasonable standards or is unsuitable for occupation. Consequently, I dismiss the tenant's application for a repair order.

Similarly, I dismiss the tenant's application seeking a rent reduction as I find there to be insufficient evidentiary basis that there are services or facilities not provided. The undisputed evidence is that the tenant continues to reside in the rental unit and make use of the facilities. I dismiss this portion of the tenant's application.

The tenant said that the portion of their application seeking an order that the landlord comply with the Act and seeking to place restrictions on the landlord's ability to enter the rental unit both arise from the landlord's repeated incursions into the rental suite without notice or permission. While the landlord disputed that they do so, I find that there is sufficient evidence in the testimony of the parties, the witnesses, and the written correspondence that the landlord has on multiple occasions entered the rental unit without proper notice pursuant to the Act.

I find it appropriate to order that the landlord comply with the provisions of the Act, specifically section 29 of the Act, and restrict their entry into the rental unit. I further note that any future transgression may give rise to a claim for damage and loss by the tenant.

Section 67 of the Act allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

Section 28 of the Act deals with the 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.*

I accept the tenant's evidence that the landlord's actions have caused some negative impact on the tenant's ability to enjoy the rental unit. I find that the tenant has shown the impact the landlord's behaviour has had on the tenant's right to quiet enjoyment. The tenant gave evidence on the continuing conflicts with the landlord, the landlord's frequent incursions and that the police have been contacted to intercede in the conflicts on a number of occasions. The parties' conduct throughout the hearing was further evidence of the antagonistic relationship between them.

However, I find that there is insufficient evidence for the full amount of \$4,000.00 claimed by the tenants. While I accept the tenant's evidence that there have been instances of the landlord entering the rental unit in violation of the Act, I find that there is little evidence of the impact the landlord's actions have caused. The tenant continued to reside in the rental unit and carried on the same activities that they would have in any event. While there may have been ongoing disputes with the landlord the evidence presented shows that the tenant was an active participant in the ongoing conflicts.

Based on the foregoing, I find that the landlord's behaviour has breached the tenants' right to quiet enjoyment. I find an appropriate amount of damages for loss of quiet enjoyment for the period from the commencement of the tenancy to the hearing date to be \$400.00.

The tenant also claims an amount of \$500.00 for overpaid utility bills. However, I find that there is insufficient evidence in support of this portion of the tenant's claim. I find the inclusion of multiple utility bills in the documentary evidence to be of little assistance. I find that there is insufficient evidence to show that the tenant suffered a loss, that the loss arose as a result of the landlord's actions or negligence and that the actual amount of the loss is the \$500.00 as claimed. I dismiss this portion of the tenant's application.

As the tenant's application was successful in part I allow the tenant to recover the \$100.00 filing fee from the landlord.

### Conclusion

The landlord's application is dismissed without leave to reapply in its entirety.

The 1 Month Notice is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant is issued a monetary award in the amount of \$500.00. I order the tenant to deduct this amount from future rent payable to the landlord for this tenancy at the rental unit in full satisfaction of the monetary award made at this hearing.

The balance 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 16, 2018

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Residential Tenancy Branch