



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes          CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on June 1, 2018 (the “Application”). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated May 25, 2018 (the “Notice”).

This matter originally came before me for a hearing on July 23, 2018 but was adjourned. An Interim Decision was issued July 26, 2018. This decision should be read in conjunction with the Interim Decision.

The Tenant appeared at the hearing with the Advocate. The Tenant called Witness 2 at the hearing. Witness 2 was outside of the room until required.

The Landlord appeared at the hearing with his niece to assist him (the “Landlord’s Representative”). The Landlord called Witness 1 at the hearing. Witness 1 was outside of the room until required.

Service was addressed in the Interim Decision and both parties confirmed they did not submit any further evidence after the hearing on July 23, 2018.

I explained the hearing process to the parties who did not have questions when asked. The parties and witnesses provided affirmed testimony.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties and the witnesses. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

A written tenancy agreement was submitted as evidence. The parties agreed the agreement is between the Landlord and Tenant. The agreement relates to the rental unit. The tenancy started February 15, 2015 and was for a fixed term of one year ending January 31, 2016.

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant, or a person permitted on the property by the Tenant, has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant, or a person permitted on the property by the Tenant, has caused extraordinary damage to the unit or property.

The parties agreed the Landlord served the Tenant with the Notice May 26, 2018 personally.

The Tenant testified that she filed the Application May 28, 2018. Our records show the Application was complete June 1, 2018.

The Landlord's Representative stated that the grounds for the Notice are as follows:

1. Breaches of the tenancy agreement by the Tenant.
2. Constant harassment of the Landlord about repairs which amounts to a significant interference with the Landlord.
3. Extraordinary damage including (1) the condition of the balcony (2) clutter in the unit (3) mold in the window tracks (4) stain in the bathroom.

The Landlord's Representative submitted that the Tenant has breached terms 9, 10, 13 and 33 of the tenancy agreement.

In relation to complaints from the Tenant, the Landlord's Representative testified as follows. The Tenant complains about issues in the unit that are not actually issues. The Tenant sends the Landlord letters about repairs. The Landlord attempts to address the issues raised and the Tenant then raises further issues. At times, the Tenant does not make herself available such that the Landlord can do the repairs requested. The other tenants do not complain about the issues the Tenant complains about. When the Landlord does repairs, the Tenant does not maintain the unit and then continues to raise issues about further repairs. The repairs needed are due to the Tenant's own negligence. The Tenant constantly raises issues about repairs that were dealt with at a previous arbitration. This behaviour amounts to a significant interference with the Landlord.

The Landlord's Representative called Witness 4 at the first hearing. Witness 4 is a caretaker at the rental unit building and testified as follows. The Tenant has complained to him and put in requests for repairs. He would do the repair and then something else would be wrong. The Tenant was not always available to allow him into the unit to do repairs. The repairs are needed because of the Tenant's own negligence. The Tenant once requested a repair of the stove, he went up and looked at it and there was no issue with the stove. The Tenant complained about the fridge, but it worked fine. The Tenant complained about a cracked window; however, he never observed a crack.

In relation to the balcony, the Landlord's Representative testified as follows. The Tenant has a BBQ on the balcony which is a breach of the tenancy agreement. There is a stain on the balcony floor caused by excess water from the plant that does not have a water collection tray under it. This affects the foundation of the floor. There is garbage and clutter on the balcony. There is a cat litter box on the balcony and having a cat is a breach of the tenancy agreement. The Tenant has a freezer on the balcony which adds weight to the floor. There are plants on the wood cap of the balcony that do not have water trays under them. The water from the plants trickles down and damages the siding.

The Landlord's Representative called Witness 1 who testified as follows. He has been a contractor and owned construction companies. He is a part owner of the rental unit building. He inspected the balcony of the unit May 14, 2018. There was clutter and garbage on the balcony. The photos submitted show clutter, a freezer, a BBQ and cat litter on the balcony. There is no hole in the balcony as alleged by the Tenant. The photos show damage to the balcony. His concern is that the clutter will collect rain and there will be no air circulation which will damage the plywood. The black dirt in the window track can ruin the rubber around the frame of the window. The water from watering the plants has stained the balcony.

In relation to clutter in the unit, the Landlord's Representative pointed to a photo of the entrance hall in the unit. She submitted that the clutter increases the chance of mold and rodents in the unit.

The Landlord's Representative testified that there is mold in the window tracks in the unit and pointed to a photo in this regard. She said this was a breach of the tenancy agreement.

The Landlord's Representative testified about the stain in the bathroom at the first hearing. She said the issue with the bathroom was the complaints received from the Tenant about mold and that the extraordinary damage ground in the Notice relates to the balcony. Given this position, I told the Landlord's Representative I would not consider the stain in the bathroom any further in relation to extraordinary damage. The Landlord's Representative then came to the second hearing date and said the bathroom stain was part of the extraordinary damage ground.

The Advocate submitted that the grounds for the Notice were not made clear by the Landlord in the Notice. She submitted that the proper grounds for the Notice were not checked off and that

the Landlord should have checked off that the Tenant breached a material term of the tenancy agreement if that was the basis for the Notice.

The Advocate further submitted as follows. The Tenant disagrees that the repair requests amount to a significant interference with the Landlord. The Tenant has not harassed the Landlord to do repairs. The Tenant has a duty to minimize loss and costs associated with damage to the unit and this is what she is doing by notifying the Landlord of issues in the unit. The frequency of the Tenant's correspondence is reasonable given the number of issues in the unit. The correspondence is polite and respectful. The Landlord has accepted responsibility for repairs and has tried to address them which does not accord with the repair requests being unreasonable.

In relation to the clutter on the balcony, the Advocate submitted as follows. The Landlord's photo of the stain on the floor is of the freezer and not the floor. The items on the balcony are not the reason for the water damage to the balcony. The building is very old. The damage is from significant long-term rot from constant rain and moisture. The Tenant's photos show ivy has been pulled off the balcony and ivy causes damage. The hole in the photos is on the outside of the balcony.

The Advocate called Witness 2 who testified as follows. He has more than 30 years of experience in property management and maintenance. He attended the unit and inspected the balcony. He took the photos submitted as evidence. The photos show years of plant growth that permeated the balcony. The deck coating is coming off in large sections and has been for a long time. The plywood has rotted due to weather over many years. A portion of the deck has been cut out and a piece of plywood put over it. This is not an acceptable repair of the balcony. This also shows that there have been previous issues with the balcony. The balcony is not overly cluttered such that the clutter would cause damage. None of the damage is the fault of the Tenant. The damage has been occurring for a long time, it is not recent damage.

The Advocate called Witness 3 at the first hearing. He testified as follows. He is a carpenter with 32 years of experience. He inspected the balcony at the unit. The balcony was not in good condition. There is ivy and water damage. His opinion is that the balcony has been in this condition for a while. Someone replaced the railings on the balcony with a negative slope such that the railings bring water back into the balcony. The railing is rotted. The damage is not caused by the Tenant. The building is old and has not been maintained. The damage is not something that would have happened in the last five years, it would have occurred over a long period of time.

The Advocate submitted that the Landlord has not indicated how clutter in the unit has caused damage. She argued that a disorganized hallway does not amount to extraordinary damage.

The Advocate further submitted as follows. The Landlord has not provided any proof that it is mold in the window tracks and not dirt. The material simply needs to be wiped off. This does

not amount to extraordinary damage. None of the issues listed by the Landlord amount to extraordinary damage. The damage in the unit is not due to the Tenant's actions or neglect.

The Advocate submitted that it took a long time for the Landlord's Representative to articulate the reasons for the Notice and that this shows the Notice was issued in bad faith.

The Landlord submitted photos of the balcony and inside the unit.

The Tenant submitted extensive submissions and materials which I have reviewed. I note that the Tenant's materials detail six incidents where the Tenant raised repair issues with the Landlord or an agent of the Landlord. This is between January 16, 2017 and May 11, 2018.

I have reviewed the decision from the previous arbitration. This related to an application by the Tenant. The arbitrator found insufficient evidence that there continued to be mold in the unit or that the Tenant's health issues were caused by mold.

#### Analysis

The Landlord was permitted to serve the Notice based on the grounds noted pursuant to sections 47(1)(d) and 47(1)(f) of the *Act*. The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*.

There was no issue that the Tenant received the Notice May 26, 2018. Based on our records, I find the Tenant completed the Application June 1, 2018, within the time limit set out in section 47(4) of the *Act*.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules of Procedure. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I am not satisfied based on the evidence provided that the Landlord has established the grounds for the Notice.

I note that much of the first hearing was spent trying to determine what grounds the Landlord was relying on for the Notice. I found the testimony and submissions of the Landlord's Representative unclear and confusing in relation to the grounds for the Notice. At times, the Landlord's Representative seemed to be contradicting herself and the written submissions provided. For example, at the first hearing it was determined that the stain in the bathroom was not part of the basis for the Notice after much discussion on this point. The Landlord's Representative then came to the second hearing saying that the stain in the bathroom was a basis for the Notice. I accept the submission of the Advocate that the lack of clarity in relation to the grounds for the Notice raises concerns about whether the Landlord in fact has grounds for the Notice.

I cannot find that breaches of the tenancy agreement alone are sufficient to uphold the Notice as the Landlord did not indicate on the Notice that a breach of a material term of the tenancy agreement was a basis for the Notice.

The parties took differing positions on whether the Tenant has constantly harassed the Landlord about repairs and issues with the unit. The Landlord submitted no documentary evidence to support his position in this regard. I am not satisfied based on the evidence of Witness 4 that the Tenant has constantly harassed the Landlord about repairs or issues in the unit. Witness 4 did not outline complaints from the Tenant that I would consider to be constant or rise to the level of harassment.

The Tenant submitted documentary evidence about her requests for repairs. All I can find from this evidence is that the Tenant communicated with the Landlord or an agent of the Landlord six times from January of 2017 to May of 2018. I cannot find from the number or content of these communications that the Tenant is harassing the Landlord about repairs.

The Landlord's Representative submitted numerous times that all of the issues raised by the Tenant had already been addressed in previous arbitrations. The Advocate pointed out that there has been one prior arbitration between these parties. The Landlord's Representative did not dispute this. I have reviewed the decision from the prior arbitration and it only dealt with the mold in the bathroom issue. This is not the only issue raised by the Tenant in relation to repairs.

Further, I do not accept that a tenant is necessarily precluded from raising issues or requesting repairs because an arbitrator has previously found there is insufficient evidence that the issue needs to be addressed or repair completed. This is particularly so when the issue is mold. It may be that, as of the hearing date, there is insufficient evidence of mold, but months later mold has appeared or returned. It is not logical that a tenant in this circumstance is precluded from asking the landlord to address the mold issue for the duration of the tenancy.

In the circumstances of this matter, I cannot accept that the Tenant raising issues already addressed in a prior arbitration amounts to "constant harassment" as alleged by the Landlord or a "significant interference" or "unreasonable disturbance" as alleged in the Notice.

I note that fielding complaints and correspondence from tenants about issues and repairs in a rental unit is the job of a landlord. I also accept the Advocate's submission that it is the Tenant's obligation to make the Landlord aware of issues that arise in relation to the rental unit that may result in damage or loss.

I do not accept that the Tenant has caused extraordinary damage to the balcony. The only evidence submitted by the Landlord to support the position that the items on the balcony pose a risk to the balcony is the testimony of Witness 1. Witness 1 testified that the clutter on the balcony is the issue. The Tenant called two witnesses who testified that the damage to the

balcony is a result of many years of weather and moisture and not the fault of the Tenant. I cannot find a basis to prefer the evidence of Witness 1 over the evidence of Witness 2 and 3. I am not satisfied based on the evidence provided that the Landlord has established that the Tenant has caused extraordinary damage to the balcony.

I do not accept that the Tenant has caused extraordinary damage to the unit given clutter in the unit. The Landlord submitted one photo of items in a hallway. The Landlord's Representative submitted that this clutter increases the chance of mold and rodents. The Landlord did not submit any evidence to support this position. I did not understand the Landlord's Representative to say there is mold in the unit and in fact I understood the Landlord's Representative to take the position that there is no mold in the unit.

I do not accept that the Tenant has caused extraordinary damage based on mold in the window tracks. Again, the Landlord submitted one photo which apparently shows this mold. The Advocate submitted that this is more likely dirt and I accept that it could be dirt or mold. Regardless, the Landlord's Representative did not explain how this has caused extraordinary damage to the rental unit nor has the Landlord provided any evidence to support this position.

I do not accept that the stain in the bathroom amounts to extraordinary damage given the position of the Landlord's Representative at the first hearing regarding this issue.

Given the lack of evidence to support the Landlord's position on the grounds for the Notice, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 24, 2018

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Residential Tenancy Branch