



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, ERP, RP, LAT, LRE, OLC, FFT

### Introduction

This hearing was scheduled in response to 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;
- an order for the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order for the landlord to make repairs to the rental unit pursuant to section 32;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. During the hearing the landlord testified that the tenant failed to include the landlord's legal first name in her application. Accordingly, with the parties consent, I have amended the tenant's application to include the landlord's legal first name as provided by the landlord during the hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. However during the hearing each party raised an issue with receipt of certain documents. In particular, the landlord testified that she did not receive the photographs of the pot the tenant referred to in her testimony and the tenant testified that she did not receive a copy of the stove invoice. Both parties testified that these documents formed part of their respective evidence packages.

In any event I find the photographs of the pot were not relevant and as such were not considered in making my decision. In regards to the stove invoice, I find the documentary evidence shows the tenant knew an assessment of the stove took place and ought to have known an invoice existed. For this reason, during the hearing I ordered the landlord to provide a copy of the stove invoice to the tenant following the hearing. Based on the above, I have considered the stove invoice in reaching my decision.

#### Preliminary Issue – Sever

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 1 Month Notice and whether emergency repairs were needed. Accordingly I find the remaining portion of the tenant's application must be severed.

#### 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? If so, is the tenant entitled to an order for the landlord to make emergency repairs to the rental unit?

#### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on July 15, 2018 on a fixed term until June 30, 2019. Rent in the amount of \$1,300.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$650.00 at the start of the tenancy.

The parties acknowledged that a kitchen fire occurred in the rental unit on November 13, 2018. The parties further acknowledged that on November 14, 2018, the landlord issued two warning letters to the tenant in regards to noise complaints and the kitchen fire. On November 16, 2018, the landlord had the stove assessed by a qualified technician.

On November 18, 2018, the landlord issued a 1 Month Notice to end tenancy for the following grounds;

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

The landlord contended that the 1 Month Notice was issued in response to the noise complaints and the kitchen fire.

The tenant acknowledged receipt of the landlord's 1 Month Notice, but argued it was only part of the landlord's ongoing attempt to end the tenancy. The tenant testified that prior to the kitchen fire; she had not received any warning letters. The fire itself, the tenant claimed was through no fault of her own. She was at a loss to explain the fire, other than it could have been an electrical issue with the stove itself. The tenant seeks an emergency repair order to assess the stove further to eliminate any safety issues. The tenant explained that since the fire, she has not stayed at the rental unit as she fears for her own safety.

In reply, the landlord testified that the assessment made by the qualified technician on November 16, 2018 determined it was in perfect working order.

### Analysis

Section 47 of the *Act* provides that upon receipt of a 1 Month Notice, the tenant may, within ten days dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice.

The tenant was provided with two warning letters which put the tenant on notice that any further breaches would result in termination of the tenancy. While both noise complaints and a fire could be grounds to end a tenancy, I find the landlord has failed to establish the tenant engaged in any further infractions since the warning letters were issued on November 14, 2018. Therefore I find the tenant corrected the situation within a reasonable amount of time and the landlord cannot retroactively rely on these grounds to end the tenancy. Further I find that by issuing the warning letters, the landlord established the incidents were significant but not severe enough to warrant an immediate end to tenancy. After reviewing the documentary evidence, I find it probable,

the relationship deteriorated between the parties after the fire and the landlord sought to end the tenancy on this basis. I find the landlord has not met the burden of proof and accordingly, I uphold the tenant's application to cancel the 1 Month Notice.

In regards to the emergency repair order sought by the tenant, I decline to make this order as I find the landlord has already had the stove assessed by a qualified technician as set out in the invoice provided. I order the landlord to provide a copy of the stove invoice to the tenant no later than December 28, 2018. The tenant is at liberty to obtain her own evaluation at her own cost. This portion of the tenant's claim is dismissed without leave to reapply.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application.

### Conclusion

The tenant's application to cancel the 1 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for an emergency order is dismissed without leave to reapply.

The tenant is entitled to deduct \$50.00 from future rent in satisfaction of the monetary award to recover the filing fee.

The remainder of the tenant's claim is dismissed with 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: December 17, 2018

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Residential Tenancy Branch