



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, OLC

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated April 26, 2019
- b. An order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement.

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.

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.

The landlord initially served a one month Notice to End Tenancy on the Tenant on April 14, 2019 that set the end of tenancy for May 14, 2019. She subsequently determined the end date of that Notice was incorrect and she stated that she wished to withdraw that Notice. I ordered that the April 14, 2019 Notice to End Tenancy be cancelled. She served a second Notice to End Tenancy on the Tenant on April 26, 2019 that set out the same grounds but set the end of tenancy for May 31, 2019. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated April 26, 2019?
- b. Whether the tenant is entitled to an order that the landlord comply with the Residential Tenancy Act, Regulations and/or tenancy agreement?

Background and Evidence:

On January 15, 2011 the parties entered into a written tenancy agreement that provided that the tenancy would start on February 1, 2011 and continue on a month to month basis. The tenancy agreement what was entered into on January provided that the tenant(s) would pay rent of \$664.95 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$325 at the start of the tenancy. The written tenancy agreement indicates that tenant paid a pet damage deposit of \$100. The present rent is \$713.28 per month payable in advance on the first day of each month.

Grounds for Termination:

The Notice to End Tenancy identifies 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
  - ...
- Tenant has caused extraordinary damage to the unit/site or property/park
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Briefly, the landlord gave the following evidence:

- The tenant has attached plastic, chicken wire, fibreglass etc. to the patio walls. The landlord testified this causes damage to the walls. Further it is unsightly. The landlord has asked that the tenant remove this material so that they can replace posts but she refuses.
- The tenant uses a washing machine in her rental unit which is contrary to the tenancy agreement. The landlord has had to replace the kitchen tap on two occasions at a cost of \$30 each time.
- At the end of January 2019 the tenant got into a confrontation with the landlord while she was showing other suites to prospective renters.
- The landlord has given the tenant a number of Notices but the tenant refuses to comply with the Notices.

Briefly, the tenant gave the following evidence:

- She received verbal permission from the then Building Manager to enclose the patio and install the plastic. The Building Manager constructed the enclosure for her.
- She denies the confrontation that occurred that allegedly occurred at the end of January. Later she stated she could not remember.
- The landlord gave her permission to have a portable washing machine when she moved in. She produced evidence that it is necessary for health reasons. The tenancy agreement provides that the tenant cannot install a washing machine. The portable washing machine is not installed.
- She gave evidence allegedly the landlord has failed to make repairs in a timely fashion or has made repairs improperly.

The parties gave other evidence which was not relevant to the matters in dispute.

Analysis:

Unfortunately there is a great deal of animosity between the parties and both are reluctant to work together.

I determined the landlord failed to prove that the tenant has significantly interfered with or unreasonably disturbed the landlord. I determined that the landlord's evidence on this is preferred to that of the tenant. The tenant's testimony is inconsistent and self-serving. However, I determine the incident referred to by the landlord is insufficient to amount to a significant interference or unreasonable disturbances.

I determined the landlord failed to prove that the tenant has caused extraordinary damage for the following reasons:

- I find that the tenancy agreement does not prohibit the tenant from having a portable washing machine and the tenant has not breached a material term of the tenancy agreement by the use of a portable washing machine. I determined the landlord failed to prove that two charges of \$30 each to replace the tap amounts to extraordinary damage and does not give rise to grounds to end the tenancy. However in the future I determined that the tenant is responsible for the cost of replacing the tap if the damage is caused by her use of the portable washing machine.
- I determined that the landlord failed to prove that the manner in which the tenant has used the patio (enclosure with plastic etc.) amounts to extraordinary damage. The landlord failed to provide sufficient evidence of damage to establish this amounts to extraordinary damage.

- The tenant testified she is willing to remove this material to allow the landlord access to replace posts. If the tenant refuses to remove these materials to give the landlord access to make the repairs the landlord has the right to serve a new Notice to “End Tenancy.” I determined it is not the landlord’s responsibility to put the plastic back after the repairs have been made. .

The landlord alleged the tenant has breached the following terms of the tenancy agreement and this amount to a material breach:

- The landlord alleges the tenant breached clause 14 USE OF RENTAL UNIT of the tenancy agreement by hanging picture or plants without the landlord’s written consent. I do not accept the submission of the landlord that this amounts to a material term as it covers a multitude of events some which are trivial. Further, the tenant had the express or implied consent of the previous building manager.
- The landlord relies on clause 17 CONDUCT. I accept in certain circumstances a breach of this clause can be a material term to the tenancy agreement. However, the landlord failed to provide sufficient evidence that the tenant has breached this provision.
- The landlord relies on clause 20 STORAGE, clause 22 WASTE MANAGEMENT and clause 27 REPAIRS.. I accept the submission that in certain circumstances a breach of these provisions can amount to a breach of a material term. However, there is insufficient evidence that the tenant has breached that these terms. The tenant has represented she will remove the plastic and the belongings on the patio to give the landlord access to do the repairs.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated April 26, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The Application for Dispute Resolution seeks an order that the landlord comply with the Act, Regulations and/tenancy agreement.

There is animosity between the parties. I determined the relevant tenancy that both parties are legally obliged to comply with is the agreement that was signed on January 15, 2011. I do not accept that any statement or representations that may have been made by a previous building managers amount to a variation of the written tenancy

agreement. The tenancy agreement includes the following clause APPLICATION OF THE RESIDENTIAL TENANCY ACT which includes a provision that if there are any change that is “not agreed to in writing ...is not enforceable.”

Conclusion:

I ordered that the Notice to End Tenancy dated April 26, 2019 be cancelled. I further ordered that the parties comply with the Residential Tenancy Act, Regulations and tenancy agreement dated January 15, 2011.

**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 15, 2019

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Residential Tenancy Branch