



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, LRE, AAT, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, undated ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70;
- an order to allow access to or from the rental unit for the tenant or the tenant's guests, pursuant to section 70; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord, the landlord's lawyer and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that his lawyer had permission to speak on his behalf at this hearing. This hearing lasted approximately 37 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to reverse the first name and surname of the landlord, which was listed incorrectly on the tenant's application. The landlord consented to this amendment during the hearing.

During the hearing, the tenant confirmed that he did not require an order to allow him or his guests access to the rental unit. He said that he had access to his rental unit. Accordingly, this part of the tenant's application is dismissed without leave to reapply.

### Settlement of Some Issues

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of their dispute.

Both parties agreed to the following final and binding settlement of a portion of their dispute at this time:

1. Both parties agreed that this tenancy is continuing until it is ended in accordance with the *Act*;
2. The landlord agreed that his 1 Month Notice, undated, was cancelled and of no force or effect;
3. The landlord agreed that the tenant is permitted to have a small greenhouse in the yard, not the deck, at the rental property.

These particulars comprise the full and final settlement of a portion of this dispute for both parties. Both parties affirmed at the hearing that they agreed to the above terms, free of any duress or coercion. Both parties agreed that the above terms are legal, final, binding and enforceable, which settle a portion of this dispute.

I made a decision regarding the remainder of the tenant's application because the parties were unable to reach a settlement on those issues.

### Issues to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to an order restricting the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2014. Monthly rent in the current amount of \$1,120.00 is payable on the first day of each month. A security deposit of \$500.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties and a copy was provided for this hearing. The tenant continues to reside in the rental unit.

The tenant seeks an order requiring the landlord to provide written notice before entering the common area yard and deck at the rental property, which is shared with other occupants. The tenant also seeks an order to put small planters on the deck and have a shared garden with four other tenants in the yard, at the rental property. He said that he had planters on the deck for the last two years and the landlord never said anything until recently when he inspected the deck. He stated that the landlord put in waterproof vinyl flooring on the deck and the tenant did not think he caused any water damage with his planters. The tenant claimed that he wants a shared garden with the other four tenants, he made a proposal to the landlord for same, and the landlord has not agreed. He explained that even though these items are not included in his monthly rent, section 17 of his tenancy agreement allows for additional terms to be added.

The landlord stated that he does not want the tenant to keep planters on the deck at the rental property. He said that it causes water damage and he had to replace the flooring at a high cost. He explained that the tenant is not entitled to have a garden in the yard at the rental property, because he does not want his yard being dug up by all the occupants living at the property. He maintained that he has people taking care of his yard and he wants to maintain it in good shape. He claimed that he allowed the tenant to have a small greenhouse in the yard and the tenant can use that as a garden. The

landlord provided photographs of these areas, with his written evidence. He stated that there are many places in the local City area that allow for people to pay for gardens and maintain them in those areas, so the tenant can explore that option.

### Analysis

Sections 27 and 28 of the *Act*, state the following, in part:

#### *Terminating or restricting services or facilities*

*27(1) A landlord must not terminate or restrict a service or facility if*

- (a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or*
- (b) providing the service or facility is a material term of the tenancy agreement.*

#### *Protection of 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.*

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for an order restricting the landlord's right to enter the rental unit, without leave to reapply. I also dismiss the tenant's application for an order allowing the tenant to have planters on the deck and a garden in the yard at the rental property, without leave to reapply.

I find that the landlord has not entered the tenant's rental unit without notice or permission. I find that the landlord is entitled to inspect the common areas at the rental property, which is shared between the tenant and other occupants. The landlord is entitled to inspect these areas in order to determine that they are being used for reasonable and lawful purposes, as per section 28(d) of the *Act*, noted above. I find that this inspection does not amount to "significant interference" against the tenant, as per section 28(d) of the *Act*, noted above.

I find that the tenant is not entitled to have planters on the deck or a garden in the yard at the rental property. The tenant confirmed that he did not have written permission from the landlord to use these spaces for these purposes. While the tenant may have been using these spaces without the landlord's permission prior to this hearing, the landlord issued written warnings to the tenant, to stop doing so. The tenant has not paid the landlord any additional rent to use these spaces and the landlord does not want additional rent. The parties' written tenancy agreement does not include the tenant's use of the deck or the yard for these purposes as part of the monthly rent. There are no additional terms for the tenant to use these spaces for these purposes, as part of the parties' written tenancy agreement. I find that the use of these areas are not essential services or facilities that are material to the parties' tenancy agreement.

As the tenant was partially successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

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

I order the tenant to deduct \$100.00 from his monthly rent due to the landlord for this rental unit and this tenancy, in full satisfaction of the monetary award for the application filing fee.

The remainder 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: October 04, 2019

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Residential Tenancy Branch