



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC FFT LRE OLC**

### **Introduction**

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

- An order to cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47;
- Authorization to recover the filing fees from the landlord pursuant to section 72;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70; and
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62.

Both the landlord and the tenant attended the hearing. As both parties were in attendance, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution and the parties acknowledged the exchange of evidence and stated there were no concerns with timely service of documents. Both parties were prepared to deal with the matters of the application.

On November 19, 2019, the landlord filed a request for clarification of this order. In accordance with section 78 of the Act, this order has been clarified. As a result I have added additional analysis to this decision.

### **Preliminary Issue – Unrelated Issues**

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. I determined the issue of whether to cancel the landlord's one month notice to end tenancy for cause was unrelated to the tenants' other issues and dismissed them with leave to reapply at the commencement of the hearing. The issue of the filing fee will be determined at the conclusion of this decision.

Issue(s) to be Decided

Should the One Month Notice dated September 24, 2019 and the One Month Notice dated October 10, 2019 be cancelled or upheld?

Should the filing fee be recovered by the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree on the following facts. The rental unit is a room located in a home consisting of several individually rented out bedrooms with the tenants sharing common bathroom and kitchen facilities. The tenant originally lived in one of the bedrooms located in the lower portion of the home but now lives in one of the smallest bedrooms in the upper portion of the house and currently pays rent in the amount of \$341.24 per month.

The tenancy began in April 2015 with a previous owner as landlord. No tenancy agreement was signed with the previous landlord or with the new landlord when the new landlord purchased the property. The landlord does not live on the property.

The tenant testified that when he moved into the bedroom in the upper unit, the lock mechanism in the doorknob was faulty and would not lock. A clasp-type mechanism was affixed to the door allowing the door to be locked by padlock. The tenant testified the original padlock on the door no longer worked and he had to replace it with a numeric combination lock. A photograph of the door and lock were provided as evidence. The tenant testified that he doesn't trust the other occupants of the house and he was concerned with keeping his bedroom and its contents safe when he wasn't there. He doesn't trust the landlord as he submits the landlord had previously entered his room without notice and took photographs which were used in another dispute resolution proceeding.

The landlord testified that he was made aware that the tenant replaced the lock on his door some time in April. Despite repeated attempts to have the tenant put the original lock back on or provide the landlord with the combination to the numeric lock, the tenant did neither. The landlord testified the tenant never advised him the original lock was

broken and that the tenant changed the lock on his own without the landlord's permission.

On September 25, 2019 the landlord served the tenant with the first of two One Month Notices To End Tenancy for Cause by posting it to the tenant's door. The reason for ending the tenancy stated was:

- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- This tenant rents a room and shares bathroom and kitchen with others. This tenant changed his room lock to a numeric one without the landlord's permission. 3 letters were issued on April 13, April 26 and July 22, 2019. He was requested to give the lock code to the landlord or change the original lock back. He ignored the repeated requests and has not corrected for 5 months until now. Those 3 letters are enclosed with this notice.

The landlord served the tenant with a second One Month Notice To End Tenancy for Cause on October 10, 2019 by posting it to the tenant's bedroom door. The tenant amended his Application for Dispute Resolution to dispute the second notice the following day, on October 11<sup>th</sup>. The reason for ending the tenancy stated on this Notice read:

- the tenant or a person permitted on the property by the tenant ***has engaged in illegal activity*** that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord.
- This notice is for the reason that this tenant jeopardize a lawful right of the landlord. This tenant changed his room lock without the landlord's permission. 3 letters were issued last 5 months. He did not give the key code until a one month notice was served on September 25, 2019. He violated this section of the Residential Tenancy Act: 31(3). A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

At the hearing, the landlord testified the issue of the changed lock was still the reason for serving the second Notice; the description of the reason of '*jeopardizing a lawful right or interest of another occupant or the landlord*' better describes the reason for issuing it.

The landlord testified he received the combination lock to access the tenant's room on September 25<sup>th</sup> by email. He does not know if the combination provided works since he has not tried to open the lock himself.

### Analysis

Sections 31(2) and (3) of the *Act* read:

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Section 28 of the *Act* states

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.

The evidence presented by both the parties show the tenant changed the lock accessing his bedroom. The bedroom is not a common area of the home shared by the multiple occupants of the home and therefore the tenant is not in violation of section 31(2) of the *Act*.

Secondly, the *Act* defines a rental unit as living accommodation rented or intended to be rented to a tenant. In this case, the tenant paid rent to access both the common areas of the household, including kitchen facilities and the bathroom as well as what can be considered to be a private area of the home designated for his exclusive use: his bedroom.

**Residential Tenancy Branch Policy Guideline PG-8 [Unconscionable and Material Terms] provides guidance to landlords and tenants regarding what a material term is.**

***A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy***

**Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term. The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.**

**Since the definition of rental unit includes both the common areas and the private area designated for the tenant's personal use, I find the tenant *had* violated section 31(3) of the Act by changing the lock to a *portion* of the rental unit without the landlord agreeing to it in writing and without a director's order. Despite this, I find this violation is not a material term of the tenancy agreement for the reasons set out below.**

The parties agree the landlord's access to the common areas of the multi-tenanted home is unrestricted. The landlord has not provided sufficient evidence to show why he requires access to the tenant's personal space. Given this, I find that tenant exercised his right to quiet enjoyment of his personal space, free from disturbance from either the landlord or other occupants of the shared occupancy residence. I accept the tenant's evidence that the original lock on the door was broken and that he was safeguarding his personal space when the lock was changed. Consequently, I do not find the tenant in breach of a material term of the tenancy agreement by changing the lock. The Notice dated September 25, 2019 is cancelled and of no further force or effect.

The landlord has testified that before he served the second Notice, the tenant had already provided him with the access code to the lock, although he hasn't yet checked to see if it works. Secondly, the landlord has not provided any evidence of illegal activity as stated on the Notice dated October 10<sup>th</sup>. As the reasons stated for ending the tenancy on this Notice are invalid, I cancel this Notice and declare it of no further force or effect.

I provide section 29 of the *Act* to remind the parties of the requirements for a landlord to enter the tenant's locked bedroom:

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As the tenant's application was successful, the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application.

In accordance with section 72 of the *Act*, the tenant may deduct \$100.00 from a single month's rent payment to the landlord.

### Conclusion

The Notice dated September 25, 2019 and October 10, 2019 are cancelled and of no further force or effect.

In accordance with section 72 of the *Act*, the tenant may deduct \$100.00 from a single month's rent payment to the landlord.

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: November 02, 2019

DECISION/ORDER AMENDED PURSUANT  
TO SECTION 78(1)(A) OF THE RESIDENTIAL  
TENANCY ACT ON December 3, 2019 AT  
THE PLACES INDICATED IN BOLD  
UNDERLINE.

---

Residential Tenancy Branch