



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, LRE, OLC, PSF, RP, RR, FFT

### **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 September 28, 2019
- b. An order suspending or setting conditions on the landlord's right to enter the rental unit.
- c. An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- d. An order that the landlord provide services or facilities required by the tenancy agreement or law.
- e. A repair order
- f. An order for the reduction of rent for repairs, services or facilities agreed upon but not provided.
- g. An order to recover the cost of the filing fee.

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.

I find that the Notice to End Tenancy was personally served on the Tenant on September 29, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served the landlord by mailing, by registered mail to where the landlord resides on October 1, 2019. With respect to each of the applicant's claims I find as follows:

### **Preliminary Matter:**

*Residential Tenancy Branch Rule of Procedure 2.3* provides that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Additionally, hearings before the Residential Tenancy Branch are scheduled on a priority basis. Time sensitive matters such as the validity of a notice to end tenancy are given priority over monetary claims.

It is my determination that the priority claim before me is the validity of the Notice. I find that the following claims are not sufficiently related to the validity of the Notice to End Tenancy; accordingly I exercise my discretion and dismiss these claims with leave to reapply.

- An order suspending or setting conditions on the landlord's right to enter the rental unit.
- An order that the landlord comply with the Act, Regulations and/or tenancy agreement.
- An order that the landlord provide services or facilities required by the tenancy agreement or law.
- A repair order
- An order for the reduction of rent for repairs, services or facilities agreed upon but not provided.

Issues to be Decided in this hearing:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order to cancel the one month Notice to End Tenancy dated September 28, 2019
- b. Whether the tenant is entitled to an order to recover the cost of the filing fee.

Background and Evidence:

The tenancy began on June 1, 2018 although the tenant was allowed access a few days prior to that. The written tenancy agreement provided that the tenant(s) would pay rent of \$1400 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$700 at the start of the tenancy.

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- Tenant has allowed an unreasonable number of occupants in the unit/site

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- Tenant has caused extraordinary damage to the unit/site or property/park
- Rental unit/site must be vacated to comply with a government order

Tenant's Application to cancel the one month Notice to End Tenancy:

After carefully considering all of the evidence I determined that the landlord failed to present sufficient evidence in this hearing to establish cause to end the tenancy for the following reasons:

- The landlord has the burden of proof to establish sufficient cause to end the tenancy on the basis of the evidence presented in this hearing.
- I do not accept the submission of the landlord that there are an unreasonable number of occupants in the rental unit. The presence of guests does not mean the guest is an occupant. The tenant testified he is the only person living in the rental unit. The landlord failed to provide sufficient evidence to dispute this testimony.
- The landlord alleged that the rental unit must be vacated to comply with a government order. At the hearing the landlord acknowledged that a government order has not been issued.
- The landlord alleged that the tenant tampered with his toilet which caused his toilet to overflow causing more than \$20,000 in damage to the tenant's suite and other suites below. The landlord testified that a plumber who fixed the toilet told her the toilet had been tampered with. The plumber failed to attend the hearing. The landlord failed to provide first hand information in the form of an affidavit or even a witness statement from the plumber to confirm this allegation.

The tenant denies that he tampered with the toilet. He testified he texted the landlord early in the tenancy complaining the toilet was weeping but the landlord failed to fix the problem. He further testified that there is no reason for him to damage the rental property. The rental unit is located very close to where he is working at the present time and he would not want to jeopardize the convenience of close accessibility to his work.

This is a serious allegation which if proven would be grounds to end the tenancy. However, I determined the landlord failed to present sufficient evidence in the hearing to prove that the tenant has caused extraordinary damage or that he has put the landlord's property at significant risk.

- The landlord testified that the strata council has levied three fines against her because of the conduct of the tenant. On one occasion he or someone permitted on the property by the tenant parked in a visitor's parking spot without getting an appropriate pass. On a second occasion the tenant was smoking marijuana. ON a third occasion the tenant gained access to the balcony of another rental unit. The tenant blames the landlord for not getting a visitors parking pass for him. He denies smoking marijuana in the rental unit or rental property. He admitted gaining access to the balcony of another unit. However, that occurred in October after the Notice to End Tenancy was issued. He did this to regain an expensive watch that had fallen to the balcony below. The occupants of the rental unit refused to open the door of their suite to allow him to gain access.

It is quite possible the landlord may have a right to make a monetary claim against the tenant to repay these fines. However, I determined they amount to sufficient grounds to end the tenancy for the following reasons:

- The parking pass issue does not amount to a significantly interfering with or unreasonably disturbing another occupant or the landlord.
- The landlord failed to prove the tenant was responsible for the smoking of marijuana.
- The illegal access to the balcony of the other tenant occurred after the Notice to End Tenancy was issued and cannot be part of the determination of whether there were sufficient grounds to end the tenancy based on the Notice to End Tenancy dated September 28, 2019.

#### Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to present sufficient evidence to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated September 28, 2019 be cancelled. As the tenant has been successful I order that the landlord pay to the Tenant the sum of \$100 for the cost of the filing fee such sum may be deducted from future rent.

**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: December 10, 2019

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Residential Tenancy Branch