



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RA-AN Enterprises Ltd  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      CNC, LRE, MNDC, OLC, RR, LAT, RP

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order restricting the Landlord’s access - Section 70;
3. A Monetary Order for compensation - Section 67;
4. An Order that the Landlord comply - Section 62;
5. An Order for a rent reduction - Section 65;
6. An Order for a lock change - Section 70; and
7. An Order for repairs - Section 32.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the primary matter to be dealt with is whether or not the tenancy ends and as the other claims made by the Tenant are not related to this matter, I dismiss all the claims with leave to reapply except for the claim to cancel the notice to end tenancy.

It was noted during the hearing that the Landlord's evidence of a fire inspection report could not be read. The Tenant confirmed that they were also not able to read the report as provided by the Landlord. The Landlord requested an opportunity to provide a readable report.

Rule 3.7 of the RTB Rules of Procedure provides that all evidence to be relied upon must be clear and legible. To ensure fairness and efficiency the arbitrator has the discretion to not consider evidence if the arbitrator determines that the evidence is not clear and legible. I consider that the only opportunity for the Landlord to provide a different copy of the report after this hearing would be through an adjournment of the proceedings. If the Landlord considered this report to be vital to its case, I consider that the Landlord should have taken a correspondingly appropriate level of care with the provision of this report as evidence to support its case. As the Landlord had sufficient time and fair opportunity to ensure the provision of a clear and legible report for the proceedings and as an adjournment would contribute to inefficiency in the process, I decline to adjourn the hearing solely for a better copy of the report.

#### Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reasons?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

#### Background and Evidence

The following are agreed facts: The tenancy under written agreement started in May 2005. Rent of \$464.30 is payable on the last day of each month. On December 27, 2019 the Landlord served the Tenant in person with a one month notice to end tenancy for cause (the "Notice"). The reason stated on the Notice, with detail provided on an attached page, is that the tenant or 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 of another occupant or the landlord;

- put the landlord's property in significant risk.

The Landlord states that on January 23, 2019 the Landlord was given an order by a fire inspector to remove the lock of a hallway door. The Landlord states that this was done on January 28, 2019. The Landlord states that in October 2019 they discovered that the Tenant had replaced the lock on the door and refused to remove that lock. The Landlord states that they were informed by the fire department that they should wait for the outcome of this hearing before attempting another lock change. The Landlord states that the lock puts other occupants at significant risk from fire if entry to the unit is stopped. The Landlord also states that in October or November 2019 the Tenant possibly tampered with the hallway camera in order to shield the Tenant while it was changing the locks. The Landlord states that the camera "went out" and that the Landlord is trying to fix it. The Landlord states that the camera was initially repaired and then within weeks was out again. The Landlord states that the companies they called for further repair told the Landlord that there was not availability for the repairs for two months. The Landlord states that this repair has not been booked.

The Tenant states that it absolutely did not tamper with the camera. The Tenant states that the exit light also has a camera that shows the camera in question.

The Landlord states that the Tenant is smoking in the unit. The Landlord agrees that the tenancy agreement allows smoking on the balcony. The Landlord provides a witness statement from a person who smelled smoke outside the unit. The Landlord states that this is a breach of contract and that people have complained. The Landlord states that it has asthma and affects the health of the Landlord. The Landlord confirms that no complaint letters or medical reports were provided for this dispute.

The Tenant states that it does not smoke in the unit or the balcony and that the smell of cannabis permeates the hallways.

The Tenant states that the inspection order was obtained by the Landlord on false information or that the order was altered by the Landlord to include its unit. The Tenant states that over the 15-year tenancy there have been many fire inspections and the lock on its entry door was never an issue. The Tenant states that there was no fire inspection of its unit in January 2019 with only an inspection of the unit above the Tenant's unit. The Tenant states that it spoke with the fire inspector who informed it that locks needed to be removed for units 101 and 104 as these were fire separation doors and that the lock for unit 102 did not need to be removed as the Landlord informed the fire inspector that this unit was used for storage. The Tenant states that the door for its unit is not an egress or fire door. The Tenant states that the door is the entry door into a common area shared by the Tenant and one other tenant who each rent the two rooms off this common area. The Tenant describes the unit as being one suite with two rooms rented separately in the suite. The Tenant states that the door leads out to the hallway in the building.

The Tenant states that the lock was replaced by the Tenant to ensure its privacy and that of the other tenant. The Tenant states that the other tenant in the second room has also been evicted and the hearing on that notice to end tenancy has been adjourned to obtain evidence from the fire inspector. The Tenant states that it has been a year since the fire inspection, that the Tenant does not understand the Landlord's actions, the Landlord does not communicate or answer their questions and that it has been overwhelming to the Tenant. The Tenant states that it is not trying to stop compliance or a fire inspection but want a truthful answer from the Landlord. The Tenant states that they do not believe the door lock should be removed as it is the entry to the suite used only by the Tenant and the other tenant. The Tenant confirms that the copy of the fire inspection order provided by the Landlord as evidence for these proceedings is blurry and barely readable.

The Landlord states that the Tenant only rented a room off the common area and that when you enter through the door in question the common area only has a bathroom and a sink. The Landlord states that no cooking facilities are provided with the unit. The Landlord states that the bathroom and both rooms off the common area have locks. The Landlord states that the fire department never requested to enter any of the rooms and that the Tenant was not present for the hallway fire inspection. The Landlord states that since the only exit from the common area is through the door, it could not have a lock. The Landlord states that there was no tampering of the fire inspection order.

The Tenant states that the Landlord is not telling the truth about the suite as there is a living room and a kitchen area with a sink and microwave. The Tenant states that the Landlord also removed the identifying address of #103 from the door and that if there was an emergency it would cause confusion about the Tenant's location. The Tenant states that it asked the Landlord why this was done but received no response.

The Landlord states that it removed the identifying #103 from the door because it was not relevant, and that the Tenant's room number is on its room door. The Tenant states that the door numbers for other suites were not removed. The Tenant states that its address requires the door number of the suite as does the room number inside the suite.

The Tenant states that the other tenant was also given a notice to end tenancy for cause, including the issue of the door lock and that the hearing on this matter was adjourned. A review of the Interim Decision dated March 16, 2020 for this dispute indicates that the other tenant was ordered to provide the Landlord with a copy of the lock that was installed.

Analysis

Section 47(1)(d) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk.

There is no direct evidence of the Tenant smoking in the unit. There is only evidence of smoke outside the unit and the Tenant's have given undisputed evidence of cannabis smoke outside the unit. Further, the Landlord has not provided any supporting evidence that even if the Tenant was smoking in the unit there was any serious jeopardy, significant interference or unreasonable disturbance to anybody. The Landlord did not seek to end the tenancy for a breach of a material term restricting smoking and I make no determination on whether the tenancy agreement contains such a material term. For these reasons I find on a balance of probabilities that the Landlord has not provided sufficient evidence to substantiate an end of the tenancy due to smoking.

The Landlord has no direct or supporting evidence that the Tenant tampered with the camera and the Tenant has denied such tampering. The Landlord's evidence is that the Tenant possibly tampered with the camera. Further, there is no evidence that the unworking camera has or is likely to cause any harm to any occupant, the Landlord or the property. For these reasons I find on a balance of probabilities that the Landlord has not provided sufficient evidence that the Tenant did tamper with the camera or that the tenancy should end due to any such tampering.

While the Act does not allow a tenant to change the locks to their unit without a landlord's permission, the Act also requires that a landlord provide a tenant with

reasonable privacy. I consider the Tenant's description of the kitchen, bathroom and living room (the "Space") to hold a ring of truth. As there is no evidence that anyone other than the Tenant and the other tenant having access to the Space, I consider that the Space together with the two rooms to be virtually like a shared self-contained suite. Indeed, the Landlord referred in its documentary evidence to the other tenant as the Tenant's roommate. As such, the hallway door would be the only method of entering that suite and for providing privacy to the Tenant. Further a breach of the Act by the Tenant by securing the door with a lock without the Landlord's permission, in itself, does not give rise to grounds to end the tenancy. There must be some significant adverse affect caused by the actions of the Tenant in having a locked entry door. While creating a fire risk could be considered a significant adverse affect, the Landlord's only supporting evidence of risk comes from a report that apparently orders the lock to be removed. However, the Landlord's evidence that the fire inspector also informed the Landlord to wait for the hearing before attempting a lock change is inconsistent with the Landlord's evidence of risk. For this reason, I consider that the Landlord's oral evidence alone of a fire risk does not support any great or impending risk. As the fire inspection report cannot be read to determine whether any such risk was identified or any such order was made and given the undisputed evidence of previous fire inspections with no issues over the very long term of the tenancy, I find on a balance of probabilities that the Landlord has not provided sufficient evidence upon which to find that the Tenant caused any serious risk or jeopardy to the property or to any other occupants by reinstalling a lock on the door. In considering whether any order is required in relation to the door lock, I note that the order contained in the Interim Decision dated March 16, 2020 already addresses the door lock for the Space.

As none of the reasons stated on the Notice have been found to be valid, I find that the Tenant has substantiated its claim to a cancellation of the Notice. The Notice is therefore cancelled, and the tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: March 20, 2020

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Residential Tenancy Branch