



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC MNDCT PSF

### **Introduction**

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

- a monetary order for compensation for loss or other money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

At the outset of the hearing, the spelling of the landlord's name was clarified. The landlord confirmed that his proper name was as reflected in the tenancy documents, including the 1 Month Notice. As neither party was opposed, the landlord's name was amended on the tenants' application to reflect the proper spelling of his name.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. All parties confirmed receipt of each other's evidentiary materials and that they were ready to proceed.

The tenant confirmed receipt of the 1 Month Notice dated September 19, 2020, which was personally served to him on the same date. Accordingly, I find that the 1 Month Notice was served to the tenant in accordance with section 88 of the *Act*.

## **Issues**

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

## **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

This month-to-month tenancy began on October 1, 2009. Monthly rent is currently set at \$550.00, payable on the first of the month. The landlord had collected a security deposit at the beginning of the tenancy of half of the month's rent at the time, and still continues to hold this deposit.

The landlord served the tenant with a 1 Month Notice dated September 19, 2020, providing the following grounds:

1. The tenants or a person permitted on the property by the tenants have significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that he was seeking the end of this tenancy as the tenant's behaviour has changed drastically in the last few years. The landlord acknowledges that the tenant has been residing at the rental unit for some time, and has always shared the home with the other tenant(s) residing in the other suite in the home with no issues. The landlord testified that the tenant's behaviour had changed approximately three years ago, in 2017. The landlord testified that the tenant would engage in harassing behaviour towards the other tenants that would result in the multiple and repeated loss of tenants, and resulting financial losses. The landlord expressed his frustration over the loss of time and revenue due to the tenant's behaviour. The landlord submitted multiple

statements from the tenants and neighbours. The landlord testified that the tenant would repeatedly call the police, and would disturb the landlord, sometimes multiple times a day, with his issues. The landlord testified that the loss of 3 tenants in the last year is significant, and is attributed to the tenant's inability to reside there in peace with the other tenants. The letters reference a possibility that the tenant's mental health has deteriorated, contributing to the disputes with the other tenants.

The tenant questioned the validity of the statements submitted as the tenant noticed the similar language in all the letters submitted. The landlord confirmed that he did assist with typing the letters, but that the statements were true and signed off by the parties.

The tenant is also seeking an order that the landlord provide him with access to the laundry facilities as agreed upon. Both parties confirmed that the tenant is allowed access to the laundry facilities on Tuesdays, but this requires the tenant to access the laundry room located in the other portion of the home. The access is provided by the other tenants, as agreed upon by all parties. The landlord confirmed that occasionally the other tenants had failed to provide access, but the landlord testified that he was within close proximity and had responded immediately to assist in the matter.

Lastly, the tenant requested \$500.00 in compensation for harassment by the landlord.

### **Analysis**

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed his application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

I have considered the concerns brought up by both parties, as well as the evidence that was provided for this hearing. It is clear from the testimony and evidence that the tenant has been involved in disputes with the other tenants who have resided in the other suite. I note that the letters submitted by the neighbours contain evidence of conversations with parties who were not present in the hearing, and therefore cannot be verified. I also note the speculative nature of the observations of the tenant's mental health status. For this reason, I do not place much evidentiary weight on the statements submitted by the neighbours.

I have also considered the testimony of the landlord, as well as the other evidentiary materials submitted such as the statements made by the previous and current tenants. I note the concerns brought up, including the ongoing harassment by the tenant in the form of uninvited and unwanted interactions with the tenant. I also note the tenant's concerns that these statements were produced with the assistance of the landlord. Although the contents of these statements are concerning, I find that the evidence falls short.

Although I accept the landlord's testimony that the tenant's actions have caused him and other tenants much stress and concern, I find the incidents described arise from ongoing disputes between the tenant applicant and other tenants in the home, and who were not present for cross examination in the hearing. I find that the tenant had raised valid concerns about the origins of some of these disputes, including the arrangement of the shared laundry facilities. It was undisputed by both parties that the tenant relies on the cooperation of the other tenants in the home for access to the laundry facilities. It is also undisputed that the tenant has had to rely on the landlord to assist in providing the tenant with access to this facility when the once a week access was not made available to him. Although I note that much of the issues only began approximately 3 years ago, I am satisfied that some of the conflict had arisen out of this arrangement. In light of the conflicting testimony between both parties, and the ongoing issues arising out of the laundry arrangement, I am not satisfied that the landlord had provided sufficient evidence to support that this tenancy should end on the grounds that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. I find that much of the issues arise out of interpersonal differences between the parties, and the requirement of shared facilities. For this reason, I allow the tenant's application to cancel the 1 Month Notice dated September 19, 2020. The tenancy is to continue until ended in accordance with the *Act*.

The tenant filed an application requesting that the landlord provide him with access to the laundry facilities as agreed upon. As stated above, I find that much tension and conflict has arisen out of this arrangement, which involves the cooperation of the other tenants in the home, and may contribute to the ongoing conflict as it impacts the other parties' right to peaceful and quiet enjoyment as set out in section 28 of the *Act*.

### **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...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find it grossly unfair for the two parties to be responsible for ensuring compliance with an arrangement that involves the provision of access by one tenant to a shared facility to another tenant in the home.

**Section 27 Terminating or restricting services or facilities**, states as follows,

- 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.
- (2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord
- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
  - (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

In light of the issues that have arisen from this arrangement, I order that the landlord provide for a mutually agreeable arrangement for the tenants in both suites for access to the laundry facilities as set out in the tenancy agreement, and in consideration of sections 27 and 28 of the *Act* as stated above. In the circumstance that is not possible, the tenant is given leave to reapply for a reduction in the value of the rent as allowed under section 27(2) of the *Act*.

The tenant also made a monetary claim in the amount of \$500.00 for harassment by the landlord.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

***Liability for not complying with this Act or a tenancy agreement***

**7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the Act or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the Act on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

In assessing this claim, I first note that the party applying for dispute resolution bears the responsibility of demonstrating entitlement to a monetary award. I have considered the testimony and evidence of both parties, and although I acknowledge the concerns raised by the tenant in regards to this tenancy, I find that the evidence presented by the tenant does not sufficiently support the tenant's allegations of harassment. Furthermore, although the tenant requested compensation, I find that he failed to establish the amount of loss claimed, either referenced and supported by similar claims of this nature, or by providing pay stubs, receipts, statements, or written or oral testimony to support the damages the tenant is seeking in this application. Furthermore, I find that the tenant failed to establish how his suffering was due to the deliberate or negligent act or omission of the landlord. On this basis I dismiss the tenant's monetary claim for harassment without leave to reapply.

**Conclusion**

I allow the tenant's application to cancel the 1 Month Notice dated September 19, 2020. The 1 Month Notice is of no force or effect. The tenancy is to continue until ended in accordance with the *Act*.

The remainder of the tenant's application pertaining to the laundry facility is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

I dismiss the tenant's monetary claim of \$500.00 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: November 23, 2020

---

Residential Tenancy Branch