



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, MNDCT, LRE, AAT, LAT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following relief:

- an order cancelling a notice to end the tenancy for cause;
- an order that the landlords comply with the *Residential Tenancy Act*, regulation or tenancy agreement;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- an order allowing access to and from the rental unit for the tenant and the tenant's guests; and
- an order permitting the tenant to change the locks to the rental unit.

The tenant and one of the landlords attended the hearing and the landlord also represented the other landlord. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

During the course of the hearing the parties agreed that the tenancy ended on September 30, 2020, and therefore, all of the tenant's applications, with the exception of the monetary claim are hereby dismissed without leave to reapply.

Also, during the course of the hearing, the tenant stated that he did not serve any of the evidentiary material on the landlord because the landlord already has all of it from a previous hearing. The landlord testified that evidence provided by the landlords was served on the tenant by registered mail and the landlord has provided a Registered Domestic Customer Receipt with a date stamp from Canada Post but the date is not readable. The landlord has also provided a proof of service document showing that the

tenant was served with the Notice to end the tenancy on August 31, 2020 by mailing it to the tenant's residence and by attaching a copy to the door or other conspicuous place with a Registered Mail receipt. I am not convinced that the registered mail sent to the tenant contained any evidence for this hearing, but contained a One Month Notice to End Tenancy for Cause. As a result, I am not satisfied that either party has established that evidence has been exchanged, and I decline to consider any of it.

### Issue(s) to be Decided

The issue remaining to be decided is: has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically aggravated damages and compensation for access to the rental unit being cut off by the landlords, and for issuing a notice to end the tenancy containing unjustified reasons?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on May 30 or 31, 2020 and expired on September 30, 2020, at which time the tenant was required to and vacated the rental unit. Rent in the amount of \$850.00 was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$425.00 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is 1 of 2 basement suites and the landlords reside in the upper level of the home.

The tenant further testified that he owes for September's rent. The landlords have been provided with a rent cheque for the month of August, 2020, but have not yet cashed it, so the tenant has not yet paid September's rent.

On September 1, 2020 the tenant found a One Month Notice to End Tenancy for Cause (the Notice) on the door of the rental unit. The tenant testified that It is dated August 31, 2020 and contains an effective date of vacancy of September 30, 2020, and that the reasons for issuing it state:

- Tenant is repeatedly late paying rent;
- Tenant or a person permitted on the property by the tenant has:
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property;
  - Jeopardize a lawful right or interest of another occupant or the landlord;

- Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The tenant testified that his door looked like a bulletin board with numerous notices on it. The tenant did not vacate as a result of the Notice, but because the fixed term tenancy had expired. The tenant also testified that none of the allegations contained in the Notice is true, and the tenant seeks aggravated damages in the amount of \$1,000.00, being \$200.00 for each of the 5 allegations for accusing the tenant of breaching the contract; it's not right.

The rental unit is accessible by going through 2 gates. The landlord locked the inside gate and the tenant had to go over a 6 foot fence in the neighbour's yard to get into his home; it could only be opened from the inside. When the tenant would arrive home in the evenings, he could not get in without climbing the fence, and starting on August 12, 2020 the tenant would arrive home between 9:00 and 11:30 p.m. and had to use the neighbour's fence. The tenant seeks compensation in the amount of \$30.00 for each of the 50 days that the tenant had to go over that fence.

The tenant has not provided the landlords with a forwarding address.

**The landlord** testified that the tenant didn't pay rent when it was due on August 1, 2020.

The landlord only locked the garage door area which was not for the tenant's use but for the landlord's wife's car.

The wires on the security system were cut in mid-August and the landlord called a technician. The tenant was the only one who could have done that.

The landlord further testified that it is not possible to enter the house if the door is locked, and the landlord knows that he can't do that. The tenant didn't tell the landlord about any issues with entering, but made this up after the Notice was issued. After the tenant vacated the landlord discovered that the heating system was also damaged.

The tenant was late with rent for August and September, 2020. The significant risk and illegal activity mentioned on the Notice was the security system being tampered with. There is no order under any legislation, so that reason was a mistake to put on the Notice. However, the tenant damaged the property, threatened the landlord's wife and lied about the doors being locked.

No move-in or move-out condition inspection reports were completed, and the tenant has not provided the landlords with a forwarding address in writing.

### Analysis

Where a party makes a claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists because of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of the damage or loss; and
4. what the claiming party did to mitigate any damage or loss.

The parties agree that the tenancy agreement specifies an end date of September 30, 2020, which is the same effective date contained in the Notice. Therefore, I am not satisfied that as a result of its issuance the landlord attempted to end the tenancy earlier than the end of the fixed term. Further, the tenant testified that he moved out as a result of the end of the fixed term, not as a result of the notice to end the tenancy.

I am satisfied that the landlord was annoyed that he didn't receive the rent cheque for August on the 1<sup>st</sup> of the month, and served the One Month Notice to End Tenancy for Cause. However, none of the reasons contained in that Notice were justified, and if the tenant had disputed it, I also find that the landlord would not be able to prove any of the reasons. Three late rent payments are the minimum required to end a tenancy for repeated late rent. There is no evidence that the tenant caused any damage or engaged in any illegal activity. The landlord also testified that there is no order under any legislation that justified issuing the Notice. It baffles me why the landlord issued the Notice, considering that the effective date of vacancy is the same date as the end of the fixed term.

With respect to the tenant's claim for aggravated damages, I refer to Residential Tenancy Policy Guideline 16 – Compensation for Damage or Loss, which sets out very well the legislative framework and compensation and states, in part:

"The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due."

“The amount arrived at must be for compensation only, and must not include any punitive element.”

In other words, any award must not be intended as a punishment to the landlord, but must put the tenant in the same position as the tenant would be if the landlord had not issued the Notice to end the tenancy. The Policy Guideline goes on to say:

- “Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.
- • “Aggravated damages” are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.”

The tenant claims \$200.00 for each of the reasons set out in the Notice, which I find is meant to punish the landlord. However, I am satisfied that the tenant has suffered a loss by having such untrue and unsubstantiated reasons in writing for issuing the Notice. I find that nominal damages in the amount of \$100.00 per infraction is justified in the circumstances, or \$500.00.

The tenant did not dispute the landlord’s testimony that the tenant did not notify the landlord about access problems, or that the tenant had to climb a fence. Therefore, I am not satisfied that the tenant has established that he did what was reasonable to mitigate any damage or loss suffered in that regard

The tenant’s claim of \$30.00 per day for each of 50 days for having to climb the fence is dismissed.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$500.00.

The balance of the tenant’s application is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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 09, 2020

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Residential Tenancy Branch