



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, MNDL, FFL

### Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution, filed on October 21, 2020, wherein the Landlord sought an Order of Possession and monetary compensation including recovery of the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference at 9:30 a.m. on January 14, 2020. Both parties called into the hearing. The Tenant was assisted by an agent, B.G. The parties were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Landlord entitled to an order of Possession?
2. Is the Landlord entitled to compensation for the cost to repair the rental unit?
3. Should the Landlord recover the filing fee?

### Background Evidence

This tenancy began July 15, 2019. Monthly rent was \$2,050.00 and the Tenant paid a security deposit of \$1,025.00.

The Landlord sent the Tenant a typed letter purporting to end the tenancy for cause.

The Landlord alleged the Tenant's dog had damaged the rental unit and disturbed others by continuous barking. The Landlord submitted a copy of the estimate to repair the damage in evidence before me.

For reasons which will be made clear in the analysis section of this my Decision I did not require testimony from the Tenant in response to the Landlord's claims.

### Analysis

The Landlord sought an Order of Possession for cause pursuant to section 47 of the *Residential Tenancy Act* (the "*Act*"). Section 47(3) of the *Act* provides that a landlord who wishes to end a tenancy for cause must issue a notice which complies with section 52 of the *Act*. Section 52 reads as follows:

**52** In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
  - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) **when given by a landlord, be in the approved form.**

[emphasis added in **bold**]

A review of the materials confirms the Landlord issued a notice to end tenancy which was not on the approved form. As section 52 of the *Act* provides, a Landlord *must* use the approved form when serving a notice to end tenancy. This form provides the tenant with essential information such as the reasons the landlord wishes to end the tenancy,

the date the tenancy is to end, as well as information relating to the tenant's right to dispute the notice.

The undisputed evidence before me is that the Tenant did *not* receive a notice which complies in form and content with sections 47 and 52 of the *Act*. As such, the Notice is invalid. **I therefore dismiss the Landlord's claim for an Order of Possession based on the Notice.** The Landlord is at liberty to issue a formal notice under section 47 and may make a further Application for an Order of Possession for cause.

The Landlord sought monetary compensation from the Tenant for the estimated costs to repair the rental unit. This tenancy is ongoing.

Section 32(2)(3) and (4) require a tenant to repair damage to the rental unit and read as follows:

**32 ...**

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

..

In the event a landlord believes the tenant has not repaired damage to the rental unit as required by section 32, the landlord may issue a notice to end tenancy pursuant to section 47(1)(g) which reads as follows:

(g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) [*obligations to repair and maintain*], within a reasonable time;

However, as noted above, the Landlord must give the tenant a reasonable opportunity to repair the damage. The undisputed evidence was that the Landlord had not issued a formal demand for the Tenant to repair the unit and also did not provide the Tenant with a reasonable opportunity to repair the damage. Further, there was no evidence the Landlord had incurred any cost to repair the rental unit as the Landlord simply provided an estimate for this work in evidence before me.

I find the Landlord's monetary claim to be premature. As noted, the Landlord must give the Tenant a reasonable opportunity to repair any damage. This should follow a formal demand for the Tenant to make such repairs. Should the Tenant not repair the unit as requested the Landlord may serve a notice to end tenancy pursuant to section 47(1)(g).

Further, should the tenancy end and the Tenant leave the rental unit unclean and damaged, the Landlord is at liberty to reapply for monetary compensation from the Tenant. While estimates can be used to support a monetary claim, the extent of any possible loss will not be determined until the Tenant has had an opportunity to make the repairs on her own. **I therefore dismiss the Landlord's monetary claim.** The Landlord is at liberty to reapply for monetary compensation for damages caused by her pet.

Having been unsuccessful in this Application the Landlord is not entitled to recover the filing fee. **The Landlord's claim for recovery of the filing fee is dismissed.**

#### Conclusion

The Landlord's claim is dismissed in its entirety.

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: January 14, 2021

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Residential Tenancy Branch