



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TEL-A-FRIEND MOTEL  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, MNDCT, LRE**

### **Introduction**

This hearing was re-convened following a interim decision issued at the conclusion of a hearing on October 5<sup>th</sup>. In the interim decision, I determined that the landlord's application could not be heard on October 5<sup>th</sup> because the landlord's evidence had not been uploaded to the dispute management system of the Residential Tenancy Branch in time for the hearing.

The date and time of the reconvened hearing was provided on both the interim decision and the Notice of Dispute Resolution Proceedings sent to the parties. The Residential Tenancy Branch's dispute management system indicates that both the interim decision and the Notice of Dispute Resolution Proceedings were sent to the tenant by email and to the landlord by regular mail on October 6<sup>th</sup>.

The tenant attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open throughout the hearing, scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenant, his support person, and I were the only ones who had called into this teleconference.

Based on the facts before me, I deem the landlord served with the Notice of Dispute Resolution Proceedings and interim decision on October 11, 2021, five days after the Branch sent them by regular mail in accordance with sections 89 and 90 of the *Act*. This hearing proceeded in the absence of the landlord pursuant to rule 7.3 of the Residential Tenancy Branch rules of procedure.

### **Issue(s) to be Decided**

Should the landlord's One Month Notices to End Tenancy for Cause be upheld or cancelled?

Is the tenant entitled to a monetary order?

Should the landlord's right to enter the rental unit be suspended or limited?

### Background and Evidence

The tenant provided the following undisputed testimony. He acknowledges being served with the landlord's two notices to end tenancy. He disputes the allegations contained in each of the notices.

The tenant testified that the rental unit is a unit located in a motel with other long-term tenants living in the other units. The tenant testified that in July or August of 2020, he purchased a brand-new air conditioner and began running it. The landlord verbally advised the tenant he would be required to pay an additional \$80.00 per month to use his own air conditioner. The tenant told the landlord to put that clause in writing and he would take care of it. The landlord refused to do so and instead shut the tenant's power off.

The tenant testified that because the landlord cut off his power, everything in his fridge and freezer were spoiled. The tenant had to give away the contents of his freezer to his friends and neighbours, the rest was thrown out. The tenant testified there were a couple of roasts, approximately ten TV dinners, pork chops, meat, milk and condiments in his fridge and freezer. The tenant estimates approximately \$150.00 in food was lost and that he needed to take a taxi to the market to replace his food once the power was turned back on by the landlord a week later. He estimates approximately \$150.00 for transportation and lost time to replace his food as well as the inconvenience of having no power for a week.

The tenant testified that he wants to suspend the landlord's right to enter the unit for the reason that the landlord and the landlord's sister have been harassing him. The tenant testified that when he was in the landlord's office sometime in October of 2020, the landlord took \$160.00 of his cash, saying it was payment for 2 months of using the air conditioner. The tenant asked that the landlord provide a receipt for the "bogus" charge, but the landlord refused to provide him with one. When the tenant "snatched" his rent receipt from the landlord's hand, the landlord ran after the tenant saying she would "F\*\*\* him up good". After this incident, the landlords began blaring music towards the tenant's unit so loud that the neighbours in an adjacent building asked the tenant why the landlords were behaving that way. The tenant states that he has no problem with the landlord coming into his unit with proper notice and inspecting, however he does not like her yelling at him and harassing him.

### Analysis

I refer the parties to the following Residential Tenancy Branch Rules of Procedure:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

#### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

#### **7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

The landlord did not attend the hearing to present any evidence to prove the reasons to end the tenancy. Consequently, in the absence of any testimony or evidence from the landlord, who bears the burden of proof in this matter, I find that the landlord has failed to prove the grounds for issuing the One Month Notices. The notices to end tenancy issued on May 27, 2021 and July 21, 2021 are both cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

Section 7 of the *Act* states that 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.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Once again, rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim and that the standard of proof is on a

balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 27 of the *Act* states:

**27 Terminating or restricting services or facilities**

(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.

The tenant has provided undisputed testimony that the landlord shut off the power to his rental unit in July or August of 2020 and that it remained so for the period of one week. I am satisfied the landlord breached section 27 of the *Act* by restricting the tenant's electricity, a service essential to the tenant's use of the rental unit as a living accommodation. I find the \$150.00 in lost food and the \$150.00 for transportation and other inconveniences associated with being without power for a week to be both proportionate and reasonable. The tenant could not have done anything to mitigate the losses he suffered. As a result, I award the tenant \$300.00 pursuant to section 67 of the *Act*.

In order for me to grant the order suspending or limiting the landlord's right to enter the tenant's rental unit, I must be satisfied the landlord has entered into the tenant's unit in contravention of section 29 which states:

**29 Landlord's right to enter rental unit restricted**

(1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i)the purpose for entering, which must be reasonable;

- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
  - (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
  - (d) the landlord has an order of the director authorizing the entry;
  - (e) the tenant has abandoned the rental unit;
  - (f) an emergency exists and the entry is necessary to protect life or property.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The tenant provided insufficient evidence to indicate to me the landlord's right to enter the rental unit should be restricted. Although the tenant testified the landlord harasses him and makes living at the motel uncomfortable, the tenant did not provide evidence of any instances of the landlord breaching section 29 or entering his unit without notice. As such, this portion of the tenant's application is dismissed without leave to reapply.

#### Conclusion

The notice to end tenancy are cancelled and of no further force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

The tenant is entitled to a monetary order in the amount of \$300.00. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant may deduct \$300.00 from a single payment of rent due to the landlord.

The remainder of the tenant's application is dismissed 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: October 20, 2021

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Residential Tenancy Branch