



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **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 for a rent reduction - Section 65;
3. An Order for the provision of services and facilities - Section 65;
4. An Order restricting the Landlord’s entry - Section 70;
5. An Order for the Landlord to comply - Section 62; and
6. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlords’ Witness gave testimony under oath. The Parties confirm receipt of each other’s evidence.

### **Preliminary Matter**

Rule 2.3 of the Residential Tenancy Branch 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 claims in relation to rent, services, entry and compliance are not related to the matter of whether the tenancy will end, I dismiss these claims with leave to reapply.

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

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

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are agreed or undisputed facts: the tenancy started on November 1, 2021. Rent of \$400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$200.00 as a security deposit. On January 11, 2023 the Landlords gave the Tenant a one month notice to end tenancy for cause dated January 11, 2023 (the "Notice"). The Notice sets out the following reasons:

- Tenant or person permitted on the property by the Tenant has
  - Significantly interfered with or unreasonable disturbed another occupant or the landlord;
  - Seriously jeopardized the health, safety or lawful right of another occupant or the landlord;
  - Put the Landlord's property at significant risk;
- Tenant or person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- Tenant or person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.

The Notice sets out damage to kitchen cabinets, a wall, and a dishwasher. The Notice refers to an attached and undated letter from two other tenants in the unit.

The Landlord states that the illegal activity is not a reason for the Notice and was selected in error.

The Landlord states that the Tenant has damaged the kitchen cabinets and that they no longer close properly. The Landlord states that it will cost \$25,000.00 to repair the cabinets. The Landlord states that although they do not know the age of the cabinets they looked "pretty decent". The Landlord states that the house was built in 1946. The Landlord provides no photos.

The Landlord states that the siding outside the house came off and led to rodent access. The Landlord states that the Tenant is the manager of the house that is shared with several other tenants. The Landlord states that the Tenant failed to inform the Landlord of the siding damage. The Landlord states that the Tenant has been negligent in its job. The Landlord states that they purchased the house in February 2022 and took possession on August 9, 2022. The Landlord states they were informed by the real estate agent that the Tenant was the manager of the other tenants. The Landlord is unable to state the Tenant's duties as manager and has no evidence that the Tenant is responsible to repair or maintain the house. The Landlord states that other tenants informed the Landlord of rodents in the house and in September or October 2022 the pest control company informed the Landlord that the siding was off on the house. The Landlord states that the other tenants had reported the problems to the Tenant but the Tenant ignored them. The Landlord provides no photos.

The Landlord states that the Tenant has been disturbing other tenants as there are some issues between them. The Landlord states that the Tenant records their conversations and that this is an invasion of privacy. The Landlord states that the Landlord was also recorded while speaking to the Tenant. The Landlord states that there has been no recording inside the other tenants' private rooms or while the other tenants were not present. The Landlord states that the evidence of recording comes from the Tenant's own evidence submitted for this hearing.

The Tenant states that they are not a manager for the new Landlords. The Tenant states that while the Tenant was the manager for the previous owner the Tenant was paid separately. The Tenant provides a letter from the previous owner. The Tenant states that the kitchen cabinets are original to the house and had been freshly painted for the sale of the house. The Tenant states that they have not damaged the house in any way. The Tenant states that the Tenant has caused no disturbance at all and that it is the other tenants who are disturbing the Tenant.

The Landlord's Witness, a tenant in the house, states that the Tenant makes racist remarks to the Witness and makes racist remarks in another language. The Witness states that this has been going on for the last 4 or 5 months. The Witness states that the Tenant acts like the boss and bullies the other tenants. The Witness states that the Tenant damages the house and maybe the cabinets by yanking them sometimes "like he owns the house". The Witness states that the Tenant broke a water tap a few months ago and intentionally did something a few days ago. The Witness confirms upon questioning by the Tenant that the Tenant has never talked to the Witness.

### Analysis

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

- significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,
- put the landlord's property at significant risk;
- engaged in illegal activity; or
- caused extraordinary damage to a rental unit or residential property.

There is no evidence to support any amount of damage to the cabinets or siding. The Witness gives inconsistent evidence of having been the recipient of racist remarks from the Tenant and of the Tenant never having spoke to the Witness. There is no evidence to support that the Tenant has duties as a manager under the tenancy agreement. Further the Tenant has evidence to support that the Tenant was paid separately for work done for the previous owner. If there is an employment contract between the Tenant and the Landlord any dispute of that contract would not be under the jurisdiction of the Act. There is no evidence of the Tenant having recorded anyone without their

knowledge. There is no evidence of any illegal activity. The Landlord's evidence only supports minor issues between the Tenant and other tenants as may be expected between housemates and not to the extent where the Tenant should lose the tenancy. For these reasons and given the Tenant's evidence, I find on a balance of probabilities that the Notice is not valid for its stated reasons and that the Tenant is entitled to its cancellation. The tenancy continues.

As the Tenant has been successful with this claim I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this from future rent payable in full satisfaction of the claim.

#### Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: March 06, 2023

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Residential Tenancy Branch