

## **DECISION**

Dispute Codes      CNC MNDC OLC RP RR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain an Order to cancel a one month notice to end tenancy issued for cause, to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, to obtain an Order for the Landlord to comply with the Act and for the Landlord to make repairs, and to obtain an Order to allow the Tenant a reduction in rent for repairs or services agreed upon but not provided.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, whereby the Tenant served the Landlord, in person at the rental unit, on July 2, 2009. The Tenant later amended her application and service of the amended application by the Tenant to the Landlord was done in accordance with section 89 of the Act, sent via registered mail on August 4, 2009. Mail receipt numbers were provided in the Tenant's documentary evidence. The Landlord was deemed to be served the amended application on August 9, 2009, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

From the onset of the August 17, 2009 hearing the Landlord's telephone connection was intermittent and the Landlord hung up and called back to try for a better line. The Landlord continued to repeat his testimony throughout and then the Landlord's telephone line was disconnected from the hearing. The hearing was adjourned and

notices of adjourned hearing were sent to both the Applicant Tenant and Respondent Landlord. The Hearing Reconvened on September 15, 2009 at 9:00 a.m. Both the Landlord and Tenant appeared at the reconvened hearing and both were reminded that their testimony would be under the same affirmation they took on August 17, 2009.

### Issues(s) to be Decided

Is the Tenant entitled to Orders under sections 47, 62, 65, and 72 of the *Residential Tenancy Act*?

### Background and Evidence

#### **August 17, 2009 Testimony**

The fixed term tenancy began on November 1, 2008 with an expiry of April 30, 2009 at which time the tenancy converted to a month to month tenancy. Rent is payable on the first of each month in the amount of \$615.00 and the Tenant paid a security deposit of \$307.50 on October 15, 2008.

The Landlord testified that he issued a 1 Month Notice to End Tenancy on July 30, 2009 and that he posted the notice to the Tenant's door on August 1, 2009. The Landlord argued that the notice was issued for several reasons that have accumulated since the beginning of the tenancy.

The Landlord argued that the Tenant is repeatedly late in paying rent and that by her own testimony the Tenant admitted to paying July 2009 rent on July 2, 2009 and not on July 1, 2009 when it was due. The Landlord stated that he had made an arrangement with the Tenant when she first took occupancy that rent was to be paid in cash and that the Tenant was to call the Landlord when the rent was available for pick up. The Landlord testified that the Tenant began to pay rent with cheques instead of cash and that the Landlord did not make an issue of this change as the Landlord stated he did not always provide the Tenant with receipts. The Landlord stated that he does not have a

record of dates in which the Tenant paid her rent late but that he was certain it was at least three times.

The Landlord testified that the 1 Month Notice was issued because the Tenant has allowed an unreasonable number of occupants in the rental unit. The Landlord stated that the rental unit is a bachelor suite and that the Landlord assumes the suite is for one person. The Landlord claims that the Tenant's boyfriend lives in the suite as supported by the letters the Landlord requested from his other tenants which were submitted into evidence.

The Landlord argued that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord by having a cat in the rental unit. The Landlord stated that there is a cat litter box in the bathroom with cat litter and cat spray on the floor and the side of the bathtub which is causing a horrible smell coming from the rental unit. The Landlord testified that he has received a complaint from the upper tenant of foul odor coming from the Tenant's suite. The Landlord stated that he did not provide evidence in support of the other tenant's complaints and that the complaints did not happen very often.

The Landlord testified that the Tenant continually harasses him and has been threatening to call the *Residential Tenancy Branch* on him. The Landlord stated that an example of the "excessive harassment" he has received from the Tenant is when the Tenant called the Landlord on December 24, 2009 and demanded that the Landlord shovel the snow so she could get her car out of the drive. The Landlord argued that another example is when the Tenant called the Landlord claiming that her hot plate was not working properly. The Landlord stated that he chose to purchase a new hotplate instead of trying to fix the existing one and that when he came to give the new hotplate to the Tenant and pick up the old one the Landlord found that the old hot plate was working fine.

**September 15, 2009**

The Landlord continued his testimony in support of issuing the 1 Month Notice to End Tenancy for Cause stating that the Tenant had also complained about her bar fridge not working and the Landlord offered to replace it for a regular size fridge if the Tenant agreed to remove her deep freezer. The Tenant did not bring up the issue again. The Landlord stated that this was the type of harassment he had to deal with from the Tenant whereby she complains things are broken when they are not and the Tenant calls the Landlord on average once per month.

The Tenant argued that she has put her requests in writing lately and that the Landlord ignores them. The Tenant testified that she does call the Landlord once a month when the rent is ready to be picked up or the Landlord will call the Tenant to advise her when he will be stopping by to collect the rent.

The Landlord confirmed that he issued the 1 Month Notice to End Tenancy after he received the Tenant's Notice of Dispute Resolution because issues have built up over the past nine months.

The Landlord admitted to receiving the Tenant's written request to fix the mould and caulking problem around the tub and the Landlord confirmed that he put the note away and did not act on the Tenant's request.

The Tenant is claiming \$300.00 in damage or loss as devaluation of her tenancy at \$50.00 per month for six months because the Landlord has failed to repair the mould and caulking issue in her bathroom. The Tenant stated that she felt uneasy showering in the moldy shower and has been showering elsewhere.

The Landlord argued that he attempted to enter the rental unit in August, just prior to the first hearing, to repair the problem but the Tenant refused the Landlord access until after the dispute resolution hearing. The Landlord testified that he knew there was a problem

with the caulking around the tub and that the last time he attended to the issue was earlier in 2009.

The Tenant advised that she prevented the Landlord from entering the rental unit because she felt he was going to cover up the problem with another layer of caulking instead of repairing the problem properly.

The Landlord testified that he was a Journeyman Carpenter and is experienced in the remediation of mould in and around tubs and shower units. The Landlord advised that the repair will require that the moldy drywall/tub surround and caulking to be cleaned and the area thoroughly dried, repaired, and re-caulked. The Landlord advised that he will be able to complete the work in a two visit process to allow the area to dry overnight. The Landlord confirmed that the repair could be finished in two consecutive days and suggested that the Tenant stay at her boyfriends place during the repair.

Both the Landlord and Tenant confirmed that the Landlord has not previously requested a pet deposit and that the Tenant knew nothing of this request until the Landlord issued the 1 Month Notice to End Tenancy. The Tenant testified that the cat moved into the rental unit at the onset of the tenancy and that she advised the Landlord she had an indoor cat when she applied for the rental unit. The Landlord claimed that he did not know about the cat until approximately one month after the Tenant moved into the rental unit. The Landlord claimed that he is requesting the pet deposit now because the cat is spraying on the side of the bathtub causing a horrible odor in the rental unit.

The Tenant argued that she has found a workable solution to the breakers tripping by having her appliances plugged into power bars equipped with breakers. The Tenant stated that the power bar breaker trips preventing the main electrical breaker from tripping which allows her to reset the power bar without having to access the breaker box. The Tenant felt that someone at the rental unit should have access to the breaker box.

The Landlord advised that his tenants can call him if they have a problem and he makes sure that if he is out of town he has someone available to assist his tenants in case of an emergency. The Landlord advised that he has personal property in the basement and that he will not be allowing his tenants access to the breaker box in the basement.

The Tenant testified that her boyfriend is at the rental unit on a regular basis because the Tenant is awaiting surgery and requires her boyfriend's assistance. The Tenant argued that her boyfriend has his own residence but that she requires his assistance to do her laundry and lift items for her. The Tenant argued that she spends time at her boyfriend's rental unit as well as her boyfriend spending time at her rental unit.

### Analysis

The Landlord issued a 1 Month Notice to End Tenancy for four reasons; 1) Tenant is repeatedly late paying rent, 2) Tenant has allowed an unreasonable number of occupants in the rental unit, 3) Tenant has significantly interfered with or unreasonably disturbed another occupant, and 4) the pet deposit was not paid within 30 days as required by the tenancy agreement.

1) The Landlord could not provide evidence or testimony as to when the Tenant paid the rent late. Based on the aforementioned I find that the Landlord has failed to prove his claim.

2) The Landlord claimed that because the rental unit is a bachelor suite the Tenant has breached her tenancy by allowing her boyfriend to be at the rental unit. Section 30(1) of the Act states that a landlord cannot unreasonably restrict access to the rental unit to a person permitted at the rental unit by the Tenant. Based on the aforementioned I find that the Tenant has not breached her tenancy by allowing her boyfriend to attend the rental unit and I dismiss the Landlord's claim.

3) The Landlord states that he received a complaint from another tenant about the odour coming from the Tenant's rental unit and that this odour is being created from the Tenant's cat being in the rental unit and the cat being allowed to spray on the bathtub. The Landlord has not previously informed the Tenant of an issue regarding an odour coming from the rental unit giving the Tenant an opportunity to rectify or resolve any issues. I don't accept the Landlord's argument that the Tenant is harassing him because he hears from this Tenant about deficiencies in her rental unit and when the Landlord fails to respond to the Tenant's requests she informs the Landlord that she will go to the *Residential Tenancy Branch*. I note that both the Tenant and the Landlord are within their rights to contact the *Residential Tenancy Branch*.

I find that the Landlord has failed to substantiate his claims that the Tenant has significantly interfered with another tenant or the Landlord and I dismiss his claim.

4) The Landlord has issued a notice to end tenancy claiming that the Tenant has failed to pay a pet deposit within thirty days as required by the tenancy agreement. The Landlord has admitted to never requesting a pet deposit before issuing the notice. Section 20 of the Act states that a Landlord can only require a pet deposit at either the **onset** of the tenancy agreement or if the tenant acquires a pet **during** the tenancy. In this case the Tenant has had the cat since the on-set of her tenancy and the Landlord testified to knowing that the cat was present several months prior to issuing the notice to end tenancy. Based on the aforementioned I find the Landlord's claim to be unsubstantiated. I note that in this case the Landlord is prevented from requesting a pet deposit from the Tenant as he failed to do so at the onset of the tenancy as the Tenant acquired her pet prior to the tenancy and not during the tenancy.

Based on the testimony and evidence before me I find the reasons noted on why the 1 Month Notice to End Tenancy was issued by the Landlord on July 30, 2009 to be unsubstantiated and that this notice was issued as a retaliatory measure by the Landlord to intimidate and/or threaten the Tenant. The 1 Month Notice to End Tenancy is hereby cancelled and is of no force or effect.

I must caution the Landlord that if he continues to issue notices in a retaliatory manner, in contravention of the Act, he could be subject to administrative penalties under the Act.

The Tenant has requested access to the breaker box claiming that someone at the rental unit needs to have access in case of an emergency. I find that the Landlord has complied with section 33 of the Act by ensuring his tenants have telephone access to either himself or his back up in case of emergencies.

The evidence and testimony before me supports the Tenant's claim that she has requested the mould and caulking in the bathroom be removed and repaired, that the written request was provided to the Landlord June 1, 2009, and the Landlord has ignored the requests until the week before the August 17, 2009 hearing. I find that the Landlord has contravened section 32 of the Act which states that a Landlord must maintain and repair the rental unit and I approve the Tenant's claim in the amount of \$150.00 (\$50.00 per month for June, July, and August).

The Landlord has advised that the repairs will take two consecutive days to be completed in order to allow drying time. The Landlord has requested that the Tenant vacate the rental unit for the duration of the repairs. Based on the evidence before me I find that the rental unit does not need to be vacant in order to complete the repairs however the Tenant will be prevented from using the shower and tub for the two day period (12:01 a.m. on the first day until 11:59 p.m. on the next consecutive day) of the repairs. The Landlord is hereby ordered to clean and remove the mould from the affected areas in the bathroom, repair damage and caulk the required areas.

I have included with each decision a copy of "A Guide for Landlords and Tenants in British Columbia" and I encourage the Landlord and Tenant to familiarize themselves with their rights and responsibilities as set forth under the *Residential Tenancy Act*.



Conclusion

The 1 Month Notice to End Tenancy issued on July 30, 2009 is HEREBY CANCELLED and is of no force or effect.

I HEREBY ORDER the Landlord to remove the mould and repair the required areas in the bathroom in accordance with health, safety, and building standards, pursuant to section 32 of the Act. These repairs are to be completed in two consecutive days between the hours of 8:00 am and 8:00 p.m. and are to commence on a date that is no later than October 3, 2009. The Landlord is required to provide the Tenant with 24 hours written notice of the date he intends to commence the repairs and communicate verbally to the Tenant when he intends to return to the rental unit to complete the repairs. The Tenant is hereby ordered not to use the shower or the tub from 12:01 a.m. (just after midnight) on the evening just prior to the date the Landlord will commence the repairs until 11:59 p.m. on the second consecutive day of the repairs.

The Tenant is HEREBY ORDERED to reduce her October 1, 2009 rent payment by \$150.00 in satisfaction of her Monetary Award.

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: September 16, 2009.

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Dispute Resolution Officer