



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNC, MNDC, RR, OLC, RP

### 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:

- An Order to Cancel a Notice to End Tenancy – section 47;
- An Order of compensation for damage or loss - Section 67;
- An Order compelling the landlord to comply with the tenancy agreement – Section 62;
- An Order for the landlord to make repairs to the unit - Section 33;
- An Order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided - Section 65.

Both the Tenant and the Landlord participated in the hearing and were given full opportunity to be heard, to question the witnesses and to question each other.

### Issue(s) to be Decided

Whether the Notice to End Tenancy is valid;  
Whether the Tenant has suffered damage or loss;  
Whether the Tenant is eligible for a rent reduction;

### Background and Evidence

The tenancy started on June 1, 2010 and the monthly rent is \$465.00. The Tenant is one of 6 tenants in the residence who each have their own bedroom and share a common kitchen, living areas and bathrooms. Each of the tenants pays separate rent to the Landlord. The Tenant states that upon accepting a tenancy, she did not sign a lease with the Landlord and accepted an oral agreement for the lease. The Landlord provide a copy of a written lease between the parties however there are no signatures and the Tenant states that she has not seen this lease.

On February 16, the Tenant filed an application for dispute resolution claiming compensation for loss and asking for a rent reduction. On February 21, the Landlord served the Tenant with a one (1) month Notice to End Tenancy for Cause (“Notice”). Following the receipt of this Notice, the Tenant amended her application to include a request to cancel the Notice.

### **Notice for Cause**

The Landlord’s evidence and argument for the Notice is summarized as follows:

1. The Tenant unreasonably disturbs other tenants and the Landlord. The Landlord submitted as evidence a 22 page document with well over a hundred pages of attachments, primarily of email communications from the Tenant. The Landlord states that the emails relate “in one way or the other what is wrong with other tenants or the building and how her rights under the tenancy are overlooked.” The Landlord submits in his written submission that by virtue of the “sheer volume” of the email communications from the Tenant that he is being unreasonably disturbed. He suggests that the Tenant places unrealistic demands on him and that the demands she makes in relation to cleanliness and the state of the furniture are at a higher level of standards than is reasonable. He submits that the behaviour of the Tenant is disturbing to him in that she makes comments in her emails about the mental health, behaviour and statements of other tenants. The Landlord also submitted a letter from a past tenant, a current tenant and a neighbour as evidence of her unreasonable disturbance.
2. The Tenant has restricted the Landlord’s lawful right of access in case of emergency or threat to life or property. The Tenant had the locks on her bedroom door changed with the Landlord’s permission and for which she was reimbursed but refuses to give his caretaker a key for entry in case of emergency. The Landlord submitted a report from the Fire Department from their attendance at the residence when the Tenant lost her key and could not get inside her room. The Landlord states this as evidence of breach of his lawful right of access in case of emergency.

The Tenant’s response is as follows:

1. The Tenant disagrees that she unreasonably disturbs other tenants and the Landlord. She states that the other tenants disturb her with their actions or comments. She cites as evidence of her being disturbed by the other tenants behaviour, such as leaving the bathroom without flushing, leaving the toilet seat up, general uncleanliness, lack of courtesy, and appearing in the common areas without upper clothing. In response to the letter from the neighbour, the Tenant

states that this neighbour was making noise after 11:00 p.m. and was disturbing her.

2. The Tenant agrees that she did not give the key to the landlord as she was asked to give it to the caretaker, one of the other tenants, who the Tenant does not feel comfortable around. The Tenant further states that the Landlord owes her \$5.00 for the cost of the key. At the Hearing, the Tenant agreed to provide the key directly to the Landlord as long as the key was not in the possession of the caretaker. The Landlord agreed to keep the key and to pay the Tenant \$5.00. The Parties agreed that this agreement would last until the date of this Decision or as may be ordered through this Decision.

### **Damages or Loss**

The Tenant states that when she considered renting a room at the residence, she was aware that the tenancy included use of shared or common areas and that she understood from her oral agreement that she would have full access to these areas. She states that since November 2010, the kitchen has been “policed” by the other tenants when she cooks or uses the common areas. The Tenant further states that at least two of the other tenants are unreasonably prejudicial against her and that they control the common areas with behaviour that results in her not using the common areas. The Tenant provided 38 pages of evidence in relation to these behaviours and restrictions, including a Notice of “Key Rules for the Use of This Premises” that the Landlord put into place in February 2011 and that the Tenant claims results in a restriction of her access to common areas, in particular the kitchen.

The Landlord states that he has made several efforts over the past several months to reduce the conflict between the tenants and that he put the Rules into place in February 2011 in an effort reduce escalating conflict between the tenants. These Rules apply to all the tenants. I note that the Rules place a time limit on use of the kitchen during peak hours over lunch and dinner. I note that the rules also address cleanliness and appropriate attire, among other matters that appear related to the tenants’ disputes between themselves.

The Tenant also states that the pipes in the house are noisy, cause a loud bang in the basement and result in other tenants becoming upset when she uses the kitchen. In an effort to reduce the conflict, the Tenant states she avoids the kitchen. The Tenant states that the Landlord needs to fix the pipes and a loud noise coming from the basement to reduce conflict. The Landlord states that he was not aware of any problem with the pipes until the Tenant stated this in her application. The Landlord states that none of the tenants have informed or complained to him about the pipes being a

problem. Further, the Landlord states that the cost to repair or insulate the pipes would be prohibitive within the existing level of income derived from the tenants' rents.

The Tenant claims a reduction in rent for the months November 2010 to February 2011 in the amount of \$400.00 in compensation for use of shared areas agreed upon but not provided.

### Analysis

#### **Notice for Cause**

After careful consideration of all the evidence from both parties, including the email communications from the Tenant, I cannot find that the Landlord has substantiated unreasonable interference by the Tenant. I find that the Tenant's emails, although voluminous and somewhat taxing, dealt with matters relating to the shared tenancy, including other tenants' behaviour. How the Landlord chooses to deal with the emails from the Tenant, unless it affects the rights of the Tenant or the Landlord under the Act, cannot be determined through this dispute resolution process. Accordingly, I dismiss the Landlord's application in relation to this item of cause.

In relation to a key, nothing in the Act requires a Tenant to give a Landlord a copy of a key to a replaced lock that the Landlord authorized the Tenant to purchase and install. Notwithstanding this silence in the Act, a landlord does have a right to enter a unit where an emergency exists and the entry is necessary to protect life or property. Clearly, without a key, this right of the Landlord to enter in a case of emergency would be restricted. As the Tenant and Landlord have come to an agreement on this matter that ensures the right of the Landlord's access for emergency reasons, I find no reason to make a different order. Accordingly, the Landlord's claim is dismissed.

#### **Damages or Loss**

Section 27 of the Act provides that a landlord must not restrict a facility if the facility is essential to the tenant's use of the rental unit, or if providing that facility is a material term of the tenancy agreement. I accept the Tenant's evidence that the tenancy agreement was oral and that the use of the kitchen and other common areas is a material term of the oral tenancy agreement. I also find that use of the kitchen is essential to the tenant's use of the rental unit. I find however that the limiting the use of the kitchen, particularly a shared kitchen, is not a "restriction" as contemplated by the Act. Such limitations are common in similar situations where laundry facilities are shared and tenants have usage schedules to ensure equal time and access to those facilities. Accordingly, I dismiss the Tenant's claim that her right of access to an essential facility has been breached by the Landlord. I would also direct the parties'

attention to section 13 of the Act that provides the requirements for a written lease for any tenancy agreement entered into on or after January 1, 2004.

The Act establishes rights of tenants to quiet enjoyment of their rental unit. Where the action or inaction of a landlord permits or allows substantial interference by an outside force, which is within the landlord's power to control, the tenant may make a claim for damages for that breach. I accept the evidence of the Landlord that he was unaware of any problems with the pipes and that he has not received any complaints about noise from the pipes from any of the tenants, including the Tenant in the present case. I find therefore that the noise from the pipes is not a substantial interference and I dismiss the Tenant's claim.

Given the above findings, and in the absence of a written lease agreement, I find that the Tenant has not suffered a loss and is not eligible for a rent reduction. The Tenant's application is therefore dismissed.

#### Conclusion

The Landlord's Notice to End Tenancy is dismissed. The Tenant's application is dismissed.

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 17, 2011.

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Residential Tenancy Branch