# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, RP, OPC, FF

Introduction

This was the hearing of joined applications by the tenant and by the landlord. The tenant applied to cancel a one month Notice to End Tenancy for cause and for a repair order. The landlord applied for an order for possession. The hearing was conducted by conference call. The tenant attended with her advocate. The landlord attended with his daughter. At the outset of the hearing the landlord objected because the tenant has omitted to include his first name when naming him as a party to her application. The landlord's daughter objected to having been named as a landlord. She insisted that she is merely a tenant in a suite in the rental property, an apartment building in Vancouver. The landlord also improperly named the tenant in his application. In the style of cause for this decision I have corrected the misnomers and the misjoinder.

Issue(s) to be Decided

Should the Notice to End Tenancy dated September 27, 2011 be cancelled?
Is the landlord entitled to an order for possession?
Is the landlord entitled to a monetary order?
Should the landlord be directed to perform repairs to the rental unit?

Background and Evidence

The rental unit is an apartment in an apartment building in Vancouver. The tenancy began in March, 2005. There is no written tenancy agreement and no condition inspection was performed when the tenant moved in. The current monthly rent is $645.00.

The landlord served the tenant with a one month Notice to End Tenancy for cause dated September 27, 2011. The notice alleged that the tenant has caused extraordinary damage to the rental unit and that she has not performed required repairs of damage in the rental unit. The Notice required the tenant to move out of the rental unit by November 1, 2011.

At the hearing the landlord claimed that had removed the carpet in the rental unit without permission, broke the base of the toilet, failed to repair a broken bedroom window, painted kitchen cabinets without permission and, although not mentioned in the Notice as a ground for ending the tenancy, that she has kept a cat in the rental unit.

The tenant's evidence is that soon after the tenant moved into the rental unit she removed the dirty, worn and threadbare carpet. The tenant requested that the carpet be cleaned. The landlord refused, but, according to the tenant, agreed that she could remove the old carpet and expose the existing finished hardwood floor beneath it. The tenant said that there are other apartments in the rental property whose carpets have been removed with the consent of the landlord. The tenant denied that she has disturbed other occupants and noted that there is no tenancy agreement that prohibits her from having a cat. She testified that there are other occupants in the rental property with cats, including the landlord. The tenant's evidence was that the window in her apartment was not broken by her; it was broken by a rock thrown from outside the apartment. The tenant told the landlord of the broken window two years ago, but he has steadfastly refused to fix it, maintaining his position that it is the tenant's responsibility to repair the window. The tenant provided evidence that her bathroom is in disrepair; the floor tiles are lifting and pose a tripping hazard; the bathroom vanity has been damaged by a water leak and is in poor condition and the toilet base is cracked through no fault of the tenant.

The tenant alleged that the Notice to End Tenancy was given in bad faith and for an improper motive, namely: to evict the tenant, because she has refused to accept an unlawful rent increase. The tenant produced a copy letter from the landlord to the tenants of the rental property. In the letter the landlord said in part:

> As escalation in the area has increased over the years we have always rented the suites at a very low price. We have noticed a very unbalanced rent situation. This was brought to our attention during the last rent increase as rent amounts were shared with one another. We had informed that we will try to balance the situation on the next rent increase term.
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> To balance this issue as of December 1st 2011 a rent increase of $925 per month will take place. We have taken a look at the area's going price, spoken building board members and the tenancy board.....

After the tenant objected to the proposed rent increase the landlord sent her a letter dated August 15, 2011 demanding that she repair damage to the rental unit and remove

her cat within 30 days. On August 26th the tenant's advocate wrote to the landlord in response to the August 15th letter.

The landlord conducted an inspection of the rental unit of September 27, 2011 and on September 27th he issued the one month Notice to End Tenancy and served the tenant. On September 28, 2011 the landlord served the tenant with a Notice of Rent Increase raising the rent from $645.00 per month to $713.00 per month effective January 1, 2011. The tenant filed her application to dispute the Notice to End Tenancy on October 3, 2011. On October 3, 2011 the landlord wrote to the tenant. He said:

> We have received your dispute request today'
>
> It was our assumption that you had agreed upon this amount as your increase instead of the 925$ we were originally wanting to file through the Tenancy Board. As seen in the letter provided to you.
>
> You had come to our door on the day of receiving the letter, and advised us you were only able to pay this amount. If you choose to revoke your acceptance we would be happy to file for the full $925 through the tenancy board.

In addition to requesting an order for possession the landlord claimed payment of the sum of $5,000.00 said to be an estimate of the cost to make repairs to damage caused by the tenant. The landlord did not provide any estimates or other evidence of repair costs.

Analysis and conclusion

The evidence established that the landlord has been aware for a number of years that the tenant removed the old carpet in the rental unit and painted the cabinets. I accept the tenant's evidence that other tenants have also removed old carpet and that the landlord consented to the carpet removal and painting. I find that to the extent that there is damage in the rental unit it is attributable to normal wear and tear. I agree with the submission of the tenant's advocate that the Notice to End Tenancy was given by the landlord in bad faith and in retaliation for the tenant's refusal to agree to an unlawful rent increase. I find that there are no grounds for the Notice to End Tenancy and I order that the one month Notice to End Tenancy dated September 27, 2011 be, and is hereby cancelled. The tenancy will continue.

The rent increase given by the landlord and dated September 28, 2011 exceeds the maximum rent increase allowed by the *Residential Tenancy Act* and Regulation. The

Notice of Rent Increase is therefore void and of no effect. If the landlord wants to pursue a rent increase, he will have to serve a new Notice of Rent Increase in the proper amount or apply to the Residential Tenancy Office for an additional rent increase.

I find that the tenant is entitled to a repair order and I direct the landlord to forthwith make the following repairs:

- Replace the broken window
- Replace the bathroom floor tiles
- Replace the cracked toilet
- Repair the bathroom vanity

I have found that the above repairs are the responsibility of the landlord. The landlord has not proven an entitlement to a monetary award in any amount. The landlord's application for a monetary order and an order for possession 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, 2011.

Residential Tenancy Branch