



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

MNDC, OPT, RR

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order in compensation for damage or loss under the Act or agreement, an Order of Possession for the Tenant, and an Order permitting the tenant to reduce rent for repairs services or facilities agreed upon but not provided.

The tenant appeared, but the landlord did not show up.

Prior to hearing the tenant's evidence, it was established that the tenant currently resides in the rental unit at present and is thus in possession of the unit. Therefore, an Order of Possession for the Tenant under section 54 as requested in the tenant's application is moot and this part of the application will not be heard.

### **Preliminary Matter: Service**

At the outset of the hearing, the applicant tenant was questioned about the specific address used to serve the landlord with the Notice of Hearing, which was different than the landlord's service address shown on the tenancy agreement . A previous dispute resolution hearing on the tenant's application for monetary compensation was held on June 18, 2012 and the application was dismissed with leave on the basis that the dispute resolution officer had determined that the tenant failed to serve the Notice of Hearing to the correct address as shown on the tenancy agreement.

However with respect to the application before me today, the tenant acknowledged that, although the landlord was served by registered mail that was not sent to the same address as that shown on the tenancy agreement, this Notice of Hearing was sent to a valid service address that the landlord had provided to the tenant on the landlord's One Month Notice to End Tenancy for Cause dated August 4, 2012, a copy of which was in evidence. The tenant confirmed that she had properly served this Notice of Hearing and provided a copy of the receipt and the Canada Post Tracking slip.

Given the above I accept that the landlord was properly served by this tenant in accordance with the Act. I find that the landlord did not attend, despite being properly served, and the hearing therefore proceeded in the landlord's absence.

Preliminary Matter: Amending the Tenant's Application

At the outset of the hearing, in addition to the other matters under dispute included in the application, the tenant stated that also intended to dispute a One Month Notice to End Tenancy for Cause and she is now seeking an order to cancel this Notice. In evidence was a copy of the One Month Notice to End Tenancy for Cause dated August 4, 2012, purporting to be effective September 1, 2012 which the tenant now wants to be granted an order to have cancelled.

However, the tenant did not include this request in the tenant's application, filed on August 17, 2012 and served on the landlord. There was no indication on the application form that the tenant was seeking an order to cancel the landlord's One Month Notice to End Tenancy for Cause. The tenant's application only indicated that the tenant was seeking a Monetary Order for damage or loss under the Act; an Order of Possession for the tenant, and an Order permitting the tenant to reduce rent for repairs services or facilities agreed upon but not provided.

The tenant's current application before me pertains to monetary compensation being sought under sections 7, 67, and 65(1) of the Act.

The tenant was adamant that the application must be amended during the hearing to add her additional request for an order to cancel the One Month Notice to End Tenancy for Cause dated August 4, 2012. I find that this new issue would be considered a separate and distinct application from the issues now under dispute and presently before me. The revised application relates to section 47(4) of the Act and is not integrated with, nor analogous to, the rest of the tenant's application filed under sections 7 and 67 of the Act.

In any case, Residential Tenancy Rules of Procedure, Rule 2.5 states that an applicant may amend their own application without consent, if the dispute resolution proceeding has not yet commenced. If the applications have not yet been served on any respondents, the applicant must submit an amended copy to the Residential Tenancy Branch and then serve the amended application. If the application has already been served, and all requirements can be met to serve each respondent with an amended copy at least seven (7) days before the dispute resolution proceeding, the applicant may be permitted to file a revised application with the Residential Tenancy Branch. A copy of the revised application must be served on each respondent at least five (5) days before the scheduled date for dispute resolution proceeding. (My emphasis)

I find that the tenant's attempt to amend the application at the hearing is not compliant with Rule 2.5 of the Residential Tenancy Rules of Procedure. I further find that, because the landlord obviously had no prior knowledge of the tenant's intention to amend the application to add a request to cancel the landlord's One Month Notice to End Tenancy for Cause, it would unfairly prejudice the respondent and would violate administrative fairness and natural justice if I was to permit the amendment and proceed with the tenant's request to cancel the One Month Notice to End Tenancy for Cause.

In addition to the above considerations, I find that section 47(4) of the Act only permits the tenant to dispute a One Month Notice to End Tenancy for Cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. (my emphasis). Section 47 (5) states that:

*"If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant:*

*(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*

*(b) must vacate the rental unit by that date."*

Accordingly, I found that the tenant's request to amend the application to add a request that the One Month Notice to End Tenancy for Cause be cancelled, could not be granted under the Act nor the Residential Tenancy Rules of Procedure and therefore the tenant's request was denied.

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

Is the tenant entitled to monetary compensation and a rent abatement for the landlord's failure to follow the Act or agreement?

### **Background and Evidence**

The tenant testified that she has endured a loss of quiet enjoyment of her suite due to ongoing noise and other disruptions by various other residents in the complex. The tenant and her witness stated that the landlord had failed to ensure that the tenant's quiet enjoyment was not interfered with by neglecting to take action against numerous other residents who routinely engage in fighting, loud music, disruptive conduct and drinking. According to the tenant, the landlord failed to fulfill its duty under the Act. According to the tenant the landlord permitted and even encouraged violent and criminal behaviour and the tenant pointed out that police are frequently on site,, but nothing has been done to stop the ongoing problems. The tenant's position is that she

is one of the few residents not involved in drugs and other criminal connections and she is being persecuted because of this.

The tenant acknowledged that she did not make any of her complaints to the landlord in written form. However, according to the tenant, she repeatedly contacted the landlord to lodge complaints and has verbally voiced her objection to the noise and disruptive conduct on many occasions in the past. The tenant stated that she was told to bring any concerns to the police and has reported incidents to the police on a regular basis.

The tenant is requesting a rent abatement based on the loss of value of her tenancy because her peaceful enjoyment of the rental unit was compromised by the noise and disruptions, for which she holds the landlord accountable.

During the hearing, the tenant was given ample opportunity to present her evidence and testimony. The tenant's witness was also permitted to testify for a substantial amount of time. Near the end of the proceedings, however, the tenant persisted in arguing that she should be permitted to amend her application to include a request to cancel the One Month Notice to End Tenancy for Cause, despite this matter having been settled as a preliminary issue. The tenant became increasingly irate about my decision not to permit the amendment until the hearing was closed after the tenant became belligerent and began to make made inappropriate accusations of bias on my part.

### **Analysis**

In regard to the monetary claim for a rental abatement, I find that section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under such circumstances. (my emphasis)

It is important to note that, in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent *in violation of the Act, agreement or an order*
3. Verification of the amount to compensate for the loss or to rectify the damage.
4. Proof that the claimant took reasonable steps to minimize the loss or damage

In this instance, the burden of proof is on the tenant; to prove the existence of the damage/loss stemming directly from a contravention of the Act or agreement.

I find that a violation of the *Act* could certainly result from a landlord's repeated failure to address a tenant's complaint about noise and disruptive conduct perpetrated by other residents, and that is what the tenant is alleging in this case. However, the tenant would need to prove both that the disruption was ongoing, significant and of a level that violated the tenant's rights and, beyond that, would have to prove through evidence, that the landlord was made aware of the tenant's specific complaint and that the landlord was then afforded a reasonable opportunity to try and correct the situation in a manner that complies with the legislation.

While I accept that the tenant may have lodged verbal complaints with the landlord, about the conduct of others living in the complex, I find that I would require documentary evidence to verify that the tenant made her specific concerns clear to the landlord in written form. I find that, to support monetary compensation or a rent abatement, the tenant should have been ready to verify that she properly raised the issues with the landlord and provided sufficient evidence of the dates and nature of these communications.

I find that, under the *Act*, a landlord has limited options with respect to exerting control over the conduct of their tenants. The landlord has authority under the *Act*, to caution the tenant, send warning letters and then follow-up by finally issuing a One Month Notices to End Tenancy for Cause to repeated transgressors. After completing that, the landlord would have to make an application for dispute resolution and present evidentiary proof to support the Notice to obtain an Order of possession ending the tenancy and evicting the occupant. To terminate the tenancies of the offending renters, the landlord would need to prove that the One Month Notice that had been issued was justified and validly backed up with proper evidence confirming that the conduct in question clearly violated the rights and quiet enjoyment of other residents. This process would normally involve submitting into evidence any written complaints the landlord had received from other renters about the conduct of the individuals being evicted for Cause.

I find that it is not a reasonable expectation for this tenant to conclude that a landlord can proceed to sanction or successfully evict any other resident, without having written complaints from other renters about the conduct of that resident.

For this reason, I find that the tenant's claim that the landlord was in violation of the *Act* by failing to act was not sufficiently proven. I find that the tenant's claim for compensation failed to meet element 2 of the test for damages because the tenant has

failed to verify that she suffered a loss of value to the tenancy directly as a result of the landlord's failure to comply with the Act.

**Conclusion**

Based on the testimony and evidence, I find that the tenant's application has no merit. Therefore, I hereby dismiss the tenant's application in its entirety 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: September 17, 2012.

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Residential Tenancy Branch