



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, MNDC, RR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to reduce the rent for repairs, services, or facilities agreed upon but not provided; and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

The tenant testified that she had provided digital evidence for this hearing but no such evidence was available at the time of the hearing. The tenant testified that she sent the evidence by mail but that because she believes her mail is being tampered with she would have no way of knowing if the package was returned by Canada Post.

Despite the tenant's concerns regarding her mail service she has provided no evidence that she had sent any digital evidence to either the landlord or the Residential Tenancy Branch (RTB) or any evidence as to why her mail would have been returned to her or that her mail is being tampered with.

For the reasons, I dismissed the tenant's request to submit additional evidence outside of the Residential Tenancy Branch Rules of Procedure that require evidence to be submitted to the other party and the RTB at least 5 days prior to the hearing.

The tenant testified that she has moved out of the rental unit, as such I amend the tenant's Application to exclude the matters of the notice to end tenancy and the rent reduction.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for damage or loss under the *Residential Tenancy Act (Act)*, Regulation or tenancy agreement and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

### Background and Evidence

Both parties provided a copy of a tenancy agreement signed by them on May 1, 2012 for a 1 year fixed term tenancy beginning on June 1, 2012 for a monthly rent of \$1,450.00 due on the 1<sup>st</sup> of each month with a security deposit of \$725.00 paid.

The tenancy agreement stipulates that gas is not included and that there is parking for 1 vehicle. The tenant pointed out that in the section outlining what is included in rent the words "in carport" are noted behind garbage collection and above where it stipulates parking for 1 vehicle. The tenant submits that these words were not on the tenancy agreement she signed.

The parties agree the landlord issued the tenant a 1 Month Notice to End Tenancy for Cause on December 6, 2012 with an effective date on February 1, 2013 citing the tenant was repeatedly late paying rent and a breach of a material term of the tenancy agreement that was not corrected in a reasonable time after written notice to do so.

The landlord also submitted into evidence a copy of handwritten notice from the tenant dated December 15, 2012 indicating her intent to end the tenancy on January 15, 2013.

The tenant, in her written submission, states the landlord has been attempted to restrict her use of the two-car garage to one side so that he can use the other side contrary to their tenancy agreement. She also submits that she had not been made aware at the start of the tenancy that she would be responsible for the gas charges for the whole house including the basement rental unit.

The tenant states the landlord was attempting to withhold the basement tenant's security deposit as leverage over this tenant to allow the landlord to take back a portion of the garage. The basement tenant was the daughter of the tenant in this dispute.

The tenant also submits the landlord had threatened her with the removal of her personal belongings; of eviction; and that he would begin 30 day inspections despite never doing one prior to these problems.

The tenant sought, in her original Application, compensation equivalent to that of 2 month's rent and a full refund of her security deposit if she accepted the notice to end tenancy. As the tenant has already vacated the rental unit she still seeks this compensation as a result of the harassment she states she suffered from the landlord regarding the above noted issues.

The landlord testified that the tenant was always aware that he intended to use the garage for his own vehicle for winter and that the tenancy agreement specifies parking for 1 vehicle. The landlord also provided a copy of the previous tenant's tenancy agreement indicating that tenant was not provided any parking.

The landlord also submitted that as a result of the tenant's refusal to allow the landlord access to one side of the garage for his own purposes and after discovering the tenant had a pet contrary to the tenancy agreement he issued the notice to end tenancy.

The landlord also responded to the tenant's position on the gas utility charges by indicating that tenant was aware of her responsibility for gas utilities and that in lieu of charging the basement tenant utilities (this tenant's daughter) \$950.00 for rent he would reduce it to \$900.00 and the daughter would pay this tenant \$50.00 for gas.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

From the testimony and evidence of both parties I accept that the landlord and tenant did not get along.

I find the clause in the tenancy agreement that the landlord would provide parking for 1 vehicle indicates that the tenant was entitled to a portion of the garage that would provide enough space to park one car. I find the tenant has provided no evidence that the intended primary use of the two-car garage was for anything other than parking of her 1 vehicle as allowed under the tenancy agreement and the landlord's use (which may include parking for any party who resides in the basement rental unit).

As a result, I find the tenant was being unreasonable in restricting the landlord's access to use the 2<sup>nd</sup> parking space in the garage. I also find, based on the testimony of both parties, that while the interactions between the parties appear to have been difficult, the tenant has provided no evidence that the landlord has violated the *Act*, regulation or tenancy agreement.

I find, for example, that it is expected that a landlord inform a tenant that if they are not complying with the tenancy agreement the landlord may be considering issuing a notice to end tenancy. I find that such a warning is not a threat but rather an obligation.

In addition, I find the tenant has failed to provide any evidence to support her position that the landlord's act of informing her that he would be doing monthly inspections was used as a threat. I accept that as a result of the landlord finding out she had a pet in the rental unit, contrary to the tenancy agreement, that he had justification to inspect the rental unit on a regular basis as is allowed under Section 29(2) that allows a landlord to inspect a rental unit monthly.

Conclusion

For the reasons noted above I dismiss the tenant's Application in its entirety.

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: January 22, 2013

