



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, MNR, OLC, O, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants application to cancel a Notice to End Tenancy for cause, to suspend or set conditions on the landlords right to enter the rental unit, for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, for a Monetary Order for the cost of emergency repairs, other issues; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

- Is the tenant entitled to have the Notice to End Tenancy cancelled?
- Is the tenant entitled to an Order to set or suspend the landlord's right to enter the rental unit?

- Is the tenant entitled to an Order for the landlord to comply with the *Act*?
- Is the tenant entitled to a Monetary Order for the cost of emergency repairs?

### Background and Evidence

The tenant testifies that this tenancy started on July 01, 2011. This was a fixed term tenancy for one year but has since reverted to a month to month tenancy. Rent for this unit is \$1,180.00 per month and is due on the first day of the month.

The tenant testifies that the landlord served the tenant with a Notice to End Tenancy for cause by posting the Notice to the tenant's door on May 10, 2013. The tenant has provided a copy of the Notice in evidence and states that he disputes the two reasons given on the Notice and requests that the Notice is cancelled. The tenant testifies that the landlord had agreed to withdraw the Notice before the hearing however nothing was put in writing so the tenant did not cancel the hearing.

The tenant testifies that on one occasion the landlord attended the tenants unit without proper notice and attempted to enter the unit. However as the tenant had changed the locks the landlord was not able to enter. The tenant testifies that he is now aware that he should not have changed the locks without the landlord's permission. The tenant testifies that the tenant has asked the landlord to do repairs in the unit and the landlord will just send the tenant a text message instead of providing proper notice of entry.

The tenant seeks to set conditions on the landlord's right to enter the rental unit and seeks an Order for the landlord to comply with the *Act* with regards to entering the unit.

The tenant testifies that the landlord was informed of a required repair to a closet shelf. This shelf had not been supported correctly. The tenants roommate had placed some purses on the closet shelf and the closet shelf collapsed in the night. The tenant testifies that he informed the landlord but the landlord would not carry out

the required repair stating to the tenant that it was not the landlords fault. The tenant understands that this is not an emergency repair but testifies that he had to purchase some wood to make the repair and seeks to recover the cost of this wood from the landlord of \$25.00. The tenant has provided a receipt in evidence for this wood which shows an amount of \$24.23 was paid.

The tenant seeks to recover the filing fee of \$50.00 from the landlord.

### Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenants documentary evidence and sworn testimony before me.

With regard to the tenants application to cancel the Notice to End Tenancy for cause; In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. As the landlord has not appeared at the hearing nor has the landlord provided any documentary evidence I find that the landlord has not provided evidence to show that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

With regard to the tenants claim for an Order to suspend or set conditions on the landlords right to enter the rental unit; I refer the parties to s. 29 of the *Act* which states:

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

As the tenant has not shown that the landlord has actually entered the unit at this time I provide this information for the landlord to ensure the landlord complies with the *Act* with regards to entry into the unit. Therefore as the tenant has not shown that the landlord has entered the unit without proper notice the tenants request for an Order to suspend or set conditions of entry and for an Order for the landlord to comply with the *Act* are dismissed.

With regard to the tenants claim for the cost of emergency repairs; the tenant has testified that the closet shelve was not fitted properly and collapsed through no fault of the tenant. The tenant also testifies that the landlord refused to take responsibility for this repair and the repair was done by the tenant. This type of repair does not fall under an emergency repair, however I will award the tenant the cost of this repair as the landlord has not shown that the tenant was negligent in this closet shelve collapsing and therefore it becomes the landlords responsibility. I therefore award the tenant the sum of **\$24.23** for the costs associated with the repair.

### Conclusion

The One Month Notice to End Tenancy for Cause dated, May 10, 2013 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, the tenant is entitled to recover the **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

The tenant has been awarded the cost for a repair of **\$24.23**. The tenant may deduct this amount from the next rent payment when it is due and payable to the landlord.

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: June 12, 2013

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Residential Tenancy Branch