



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding M.T.F. HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:**     Landlord *OPC, FF*

Tenant *CNC, MNDC, OLC, ERP, LRE, AAT*

### **Introduction**

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for cause and for the recovery of the filing fee.

The tenant applied for an order to cancel the notice to end tenancy and for an order directing the landlord to comply with the *Act*, carry out emergency repairs and allow the tenant's guests access to the rental unit. The tenant also applied to set conditions on the landlord's right to enter the rental unit and for a monetary order in the amount of \$23,300.00 as compensation for loss under the *Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

The tenant sent a note regarding the address of a website on which his evidence was posted, to the Residential Tenancy Branch office and the landlord. The landlord stated that she had not reviewed the evidence. Since a website address is not an acceptable form of provision of evidence to the other party and because the landlord must know the case against her, the tenant had to ensure that the landlord had access to evidence of this type. Since the landlord has not read the evidence posted on the website, I am unable to use this evidence in the making of this decision.

### **Issues to be decided**

Does the landlord have cause to end the tenancy or should the notice to end tenancy be set aside? Is the landlord entitled to the recovery of the filing fee? Is the tenant entitled to compensation and the remedies he has applied for?

## **Background and Evidence**

The tenancy started in October 2013. There is no written tenancy agreement. The rental unit is located on the ground floor of a two storey building. Above the rental unit are two rental units and adjacent to the rental unit is a commercial store. The rent is \$600.00 per month and does not include utilities.

On June 28, 2014, the landlord served the tenant with a notice to end tenancy for cause with an effective date of July 28, 2014. The reasons for the notice were:

Tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at significant risk

Tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord

Tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord stated that tenant smokes marijuana inside the rental unit along with his visitors and despite verbal warnings to the tenant, he continues to do so. The tenant did not dispute the landlord's allegations and agreed that he does smoke marijuana inside the rental unit and that he does not have a licence to do so.

The landlord stated that the tenant and his guests swear at her, make obscene gestures and participate in activities that are consistent with selling banned substances. The landlord stated that she has had to call the police on multiple occasions and filed a police report. The report states that 11 calls for service were received and carried out, during the period of November 25, 2013 to August 02, 2014. The tenant stated that some of the calls to police were made by him when he had a problematic roommate.

The landlord testified that the two apartments upstairs were renovated and advertised for renters. During the renovations, the work stopped on two occasions due to the marijuana smoke that was coming into the work site from the tenant's unit below. The landlord stated that she has lost out on two prospective tenants for this same reason.

The landlord stated that the business next door to the tenant uses their back door for pick up and deliveries of their merchandise. This back door is located adjacent to the tenant's back door. The tenant had put up a sign with profanity on his window from the inside of the rental unit. The business owner stated that it interfered with her business and asked him to take it down. When he did not, the business owner complained to the landlord and the landlord requested him to do so. The tenant refused to cooperate. Eventually, the landlord had to tape a piece of cardboard over the sign from the outside of the window. The landlord provided photographs to support her testimony. The tenant agreed that the sign was put in his window but stated that his girlfriend had done so. He also agreed that it was inappropriate.

The landlord stated that the tenant has a person living inside the rental unit who is well known to police for crimes involving break and enter. The tenant stated that the person was only visiting but the landlord testified that this person has provided the rental unit address as his place of residence. The landlord stated that she was forced to hire full time security for the area because she observed this person loitering around her boat shed and on one occasion inside her boat shed. The tenant stated that this person now lives with his girlfriend and only visits on occasion.

The landlord stated that she always provides at least 24 hour notice to the tenant prior to visiting the rental unit. The landlord visited the unit on June 28 and took photographs of the inside of the unit. The landlord stated that the unit is "filthy" and full of clutter. The photographs filed into evidence support the landlord's testimony.

The tenant stated that the landlord's husband threatened to kill him during a visit. The landlord denied this. The tenant also stated that the landlord does not provide notice prior to visiting the rental unit.

The tenant complained about the set up of the utility meters and stated that he found out that he was also paying for a portion of another tenant's usage. The tenant added that a part of his unit was being billed to another tenant. The tenant called hydro and had an inspector visit the meters. The tenant was not home at the time of the inspection. The landlord stated that the inspector reported to her that he had not found any problems upon inspecting the premises.

The tenant also complained that the front and back door were not properly secured and he could not lock them. The landlord stated that she installed a new lock on the back door which she found removed and placed on the ground. The tenant stated that it did not work properly. The landlord responded by replacing the door.

While the trades man was installing the door, the tenant and his friends were smoking marijuana and the tradesman had to stop working. At the time of the hearing, the installation of the door was yet to be completed. During the hearing the tenant agreed to refrain from smoking marijuana while the door work is being finished. The landlord stated that she told the tenant to come by to pick up a key to the front door after his key broke, but the tenant did not show up.

The tenant also complained about one of the landlords entering his unit and breaking his camera. The tenant did not report this incident to the police. The tenant stated that he informed the landlord that the heating was not working properly and the landlord supplied him with heaters. The tenant stated that the heaters were stolen because he could not lock the front door.

The tenant's witness testified that he had occupied the upstairs unit for about 8 months and had had no problems with the tenant.

The tenant has applied for compensation in the amount of 23,300.00 for the following:

1.	Restricting Access	\$2000.00
2.	Hydro and Gas fraud	\$10,000.00
3.	Landlord's refusal to provide secure unit	\$2000.00
4.	Lack of smoke detectors	\$2000.00
5.	Landlord's forced entry attempt	\$2000.00
6.	Threat to tenant's life	\$5000.00
7.	Cost of interior door	\$200.00
8.	Broken glass picture	\$100.00
		<b>\$23,300.00</b>

## **Analysis**

### **Landlord's application**

Based on the sworn testimony of both parties, I accept the landlord's evidence in respect of the claim. The tenant received the notice to end tenancy on June 28, 2014. In order to support the notice to end tenancy, the landlord must prove at least one of the reasons for the notice.

Based on the documentary evidence and the verbal testimony of both parties I find that the tenant's smoking of marijuana inside the rental unit is causing problems for the other occupants of the building and is deterring new occupants from renting the suites above.

I further find that the tenant's visitors have also smoked marijuana inside the rental unit and posted an inappropriate message in the window. I accept the landlord's testimony that the tenant's visitor was seen trespassing on the landlord's property and that the activities of the tenant have attracted the attention of the police and forced the landlord to hire 24 hour security personnel.

The letters filed by the business owner and the trades person who carried out renovations in the upper units, confirm the landlord's testimony that the behavior of the tenant and his guests have caused problems for them and has interfered with their ability to carry out their work.

Based on the above, I find that the landlord has proven her reasons for wanting to end the tenancy. I find that the landlord is entitled to an order of possession and pursuant to section 55(2); I am issuing a formal order of possession effective two days after service on the tenant. The Order may be filed in the Supreme Court for enforcement.

The landlord has also proven her case and is therefore entitled to the recovery of the filing fee. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for **\$50.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

I further order the landlord to complete the installation of the back door, provide a front door key for pick up by the tenant, install smoke detectors and continue to provide at least 24 hour notice prior to visiting the rental unit.

Tenant's application:

Since the tenancy is ending, most of the remedies that tenant has applied for are no longer relevant. I must now decide whether the tenant is entitled to his monetary claim for compensation.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

The tenant stated that the landlord harassed him by threatening his life, breaking his camera and entering without providing at least 24 hours notice. The landlord denied all allegations and the tenant did not file sufficient evidence to prove that the landlord had harassed him. Even though interaction between the parties caused the tenant some anxiety, I find that the actions of the landlord do not fit the definition of harassment.

The tenant had the opportunity to meet the inspector who checked out the utility meters and resolve the issue of what he believes to be fraud on the part of the landlord. The tenant set up the appointment for the inspection and was not home at the time of the inspection. The landlord stated that the inspector reported no issues with the meters. Therefore I find that the tenant has not proven that the landlord committed fraud with regard to the billing of utilities.

The tenant was provided with the option of picking up a key to the front door after his own broke and he has not done so. In addition, I find that the landlord responded to the problems with the back door but was hindered in completing the job by the smoking of marijuana at the time that the work was being carried out.

The tenant has not proven that the landlord forcibly entered the rental unit and from now on I have ordered the landlord to provide at least 24 hours notice prior to entry.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support his claim of compensation for harassment. I therefore dismiss this portion of the tenant's application.

### **Conclusion**

I grant the landlord an order of possession effective **two days after service** on the tenant and a monetary order in the amount of **\$50.00**.

The tenant's application is dismissed 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: September 19, 2014

