



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: RR RP OLC MNDC CNC OPC FF

### **Introduction**

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy for cause dated November 5, 2016 to be effective December 31, 2016 was served personally and the Application for Dispute Resolution by registered mail. I find the documents were legally served pursuant to sections 88 and 89 for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47;
- b) To refund an illegal rent increase pursuant to section 43;
- c) To order repairs be done; and
- d) To recover filing fees for this application.

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

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that they received an illegal rent increase, the amounts of the increase and the amount of refund, if any, to which they are entitled? Has the tenant proved the landlord has failed to repair as required by sections 32 and 33 of the Act?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in February 1, 2016 on a fixed term lease with vacant possession on January 31, 2017. Rent is \$1500 a month and a security deposit of \$1450 was paid. It appears the male tenant had a previous tenancy from 2015. The landlord served a Notice to End Tenancy for the following reasons:

- b) The tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- c) The tenant has engaged in illegal activity that has or is likely to damage the landlord's property.

The landlord explained her main issue is with the cleanliness of the tenants. She submitted evidence on a USB of photographs showing a dirty bathroom with much discolouration indicating mould growth on the tub surround and between the tiles on the shower wall and the floor. In the first photograph, the shower curtain was also heavily discoloured but in another photograph was either new or thoroughly washed. She provided letters from former tenants or contractors in 2012 and 2014 stating there was no mould in the bathroom tiles then and the contractor finding it would now cost \$500 to repair as it has gone up the back of the tiles. She also provided photographs of grease around appliances in the kitchen which could possibly cause a fire. The tenant also provided a USB with photographs showing clean rooms but the bathroom still showed mould in the tile joints and some grease around the microwave. The landlord also submits the tenant filed their dispute too late. The Notice to End Tenancy was served personally on November 5, 2016 and the tenant filed their amendment to cancel it on November 17, 2016 but the landlord did not receive it until November 23, 2016 by registered mail. The landlord requests an Order of Possession.

The tenant requests to cancel the Notice to End Tenancy. They say they maintain the unit in a clean and sanitary condition and supplied photographs on a USB. The tenants also request an Order that repairs be made to the stove, fan and refrigerator and light in the kitchen. They provided in evidence a Decision made on a July 30, 2015 hearing which ordered these repairs be done by August 15, 2016 and if not, they were awarded a \$25 reduction in rent until they were completed. The landlord contended there was nothing wrong with the refrigerator and provided a handyman's letter saying he just has to empty the overloaded freezer top and clean the drain and the refrigerator works. He has done this twice but the tenant says it is currently leaking. The landlord said it was just a missing knob on the stove and the tenants lost it themselves. She said only a plastic cover is broken on the microwave and fan and it does not impair the function.

The tenant also claims a refund of \$30 a month for 20 months that he has been required to pay this for an "insurance fee". The landlord said this was to insure the tenant's contents and it was a verbal agreement made with the tenant.

Included with the evidence is the Notice to End Tenancy, USBs from both parties, letters, reports of professionals, inspection notices, the insurance policy and statements from the parties.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I have considered all the relevant evidence although not all is mentioned in the Decision.

I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the causes cited, namely, that the tenants' housekeeping habits are seriously jeopardizing the health, safety or lawful rights of other occupants or the landlord. I find the lack of consistent cleaning of the bathroom has led to a mold infestation that has travelled up behind the tiles which now need repairs rather than just cleaning to get rid of the mold. The credibility of the landlord is supported by evidence of a contractor and evidence from former tenants who testify that there was no mold while they lived in the unit and the landlord maintained it well. I find the landlord entitled to an Order of Possession. As the tenancy ends with vacant possession anyway on January 31, 2017 according to the fixed term lease, I grant the landlord an Order of Possession effective January 31, 2017.

The tenant claims that repairs as claimed have not been done. The landlord confirmed the knob had not been put on the stove as the tenants had lost it themselves and the contractor confirmed it was excessive food storage and lack of cleaning blocking the drain that was causing the ice buildup and leaking in the freezer. As the responsibility for these repairs was decided at a previous hearing in July, 2016, it is res judicata and I decline to comment on the responsibility to do the repairs. However, I find the arbitrator had ordered these repairs be done and if not, a rent rebate of \$25 was awarded. As the repairs are still not completed, I find the tenant is entitled to a continued rent rebate of \$25 a month until January 2017 when the tenancy is ended.

In respect to the extra verbal agreement to pay \$30 a month extra for insurance, I find no authority in the Act for the landlord to charge a tenant for insurance. Although the landlord claimed it was tenant insurance, I could find no reference in the policy included in evidence to state it included insurance for the tenant's belongings and risks. Whether the landlord was innocent of this or not, I find she illegally charged the tenants an extra

\$30 per month. I find the tenant entitled to recover \$600 (20 months x \$30) for this wrongful charge. I find the tenant entitled to recover the \$100 filing fee.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy but I find he is entitled to a monetary order as compensation for overpayment of rent.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end. An Order of Possession is issued to the landlord effective January 31, 2017.

The Application of the tenant regarding repairs and for a refund of rent is successful. A monetary order for \$600 plus filing fee is awarded to the tenant. The tenants may deduct this \$700 from their January rent or otherwise recover it.

**I HEREBY ORDER that the tenant may continue to deduct \$25 a month from his rent until January 2017 due to repairs not completed as previously ordered.**

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: December 15, 2016

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Residential Tenancy Branch