



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** CNC, MNDC, MNR, RP, FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to sections 47, 67, 32 and 72 of the *Residential Tenancy Act*. The tenant applied for an order to set aside a notice to end tenancy for cause and for a monetary order to recover loss under the *Act* and the filing fee. The tenant also applied for an order directing the landlord to carry out repairs.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord was accompanied by legal counsel. The tenant represented himself. The landlord's witness also testified during the hearing.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for a monetary order for loss under the *Act*. As this section of the tenant's application is unrelated to the main section, which is to cancel the one-month notice, I dismiss this section of the tenant's claim with leave to reapply. Accordingly, this hearing only dealt with the tenant's application to set aside the notice to end tenancy, for an order directing the landlord to carry out repairs and for the recovery of the filing fee.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties and the witness but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issue to be Decided**

Does the landlord have grounds to end this tenancy?

### **Background and Evidence**

The background facts are generally undisputed. The tenant moved into the rental home on October 01, 2004. The home is a two-level home with an area of 2,500 square feet. The basement contains a two-bedroom self contained suite. There is also an extra bedroom in the basement which is not part of the suite but is connected to the main floor by an internal staircase. The current monthly rent is \$2,103.30.00 payable on the first of each month.

The tenant testified that right from the start of tenancy, he has rented out the basement suite to help with his rental payments. In his written submission the tenant stated that he has never had any problem with renting out the basement or with the number of occupants residing in the rental unit until August 2020, some 16 years into the tenancy.

In January 2019, the owner of the rental property handed over the management of the rental unit to a property management company. The tenant agreed to sign a new tenancy agreement with the property manager. The terms negotiated by the parties were that the tenant would be allowed to rent out the basement suite.

The tenant stated that he did not hear from the landlord or the property manager for about a year. On December 31, 2019, the basement flooded. The tenant contacted the property manager and he took immediate action and had the problem attended to. Emergency repairs were conducted to remove wet carpet, drywall, take asbestos samples, inspect the furnace etc.

The tenant stated that in January 2020, a total of 5 people lived in the house. The basement suite was occupied by two tenants the extra bedroom was occupied by the tenant's room mate (JR) and the tenant and his other roommate occupied the upper level. The tenant was requested to have the basement vacated for the restoration work. The tenant stated that the occupants of the basement suite moved out on January 17, 2020 and the tenant informed the landlord in an email dated February 25, 2020. JR continued to occupy the bedroom in the basement which had minimal damage from the flood and was habitable.

The tenant stated that the basement suite remained vacant and unoccupied since January 2020. The emergency repair work was done prior to the tenants moving out and the next time restoration work started was in September 2020.

The landlord stated that due to the delay in restoring the basement, his insurance company informed him that they would not be renewing his policy when it ended in August 2020. The landlord stated that the delay was due to the occupant JR in the basement. The tenant argued that the work started up in September 2020 and is almost complete without JR moving out of the basement.

The tenant stated that the room occupied by JR had minimal damage and was habitable. On September 09, 2020, JR was asked to leave for the day while the asbestos abatement was carried out. The tenant stated that JR complied with the request and the work was completed in six hours. On October 20, 2020, JR moved his furniture to another room in the basement which was unaffected by the flood, in order to have his room painted and carpet replaced.

The tenant was firm in his belief that the delay in the work was not from JR occupying a room in the basement. The tenant stated that the landlord did not complete the work in a timely manner for reasons unknown to him and at the time of the hearing, the flooring was yet to be finished. The landlord agreed to have the restoration work fully complete by November 30, 2020.

The landlord's witness who oversees the restoration project testified that the work was delayed because of the occupants in the basement. He also agreed that the work started up again in September and was ongoing at the time of this hearing. The witness agreed that JR was the only occupant of the basement at the time the work started and that on October 20, 2020, he moved his belongings to another room in the basement that was not impacted by the flood.

On August 31, 2020, the landlord served the tenant with a notice to end tenancy for cause with an effective date of September 30, 2020. The tenant disputed the notice in a timely manner. The notice to end tenancy alleges that:

- The tenant has allowed an unreasonable number of occupants in the unit
- The tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- The tenant has seriously jeopardized the health or safety or lawful right of the landlord
- The tenant has put the landlord's property at significant risk

### **Analysis**

In order to support the notice to end tenancy, the landlord must prove at least one of the grounds alleged.

The tenant testified that at the time of the flood there were a total of 5 people residing in the rental home. The tenant added that the two occupants of the basement suite moved out on January 17, 2020 due to the damage to the rental unit caused by the flood. This left a total of three people occupying the rental house from February 2020 to the date of this hearing. The tenant provided proof of having informed the landlord that the occupants of the basement suite had moved out, in an email dated February 25, 2020.

One of the reasons for the notice to end tenancy is that the tenant has allowed an unreasonable number of occupants in the rental unit. Based on the testimony of the tenant and the documents filed into evidence I find that at the time the notice was served on the tenant, there were three people living in the two level 2,500 square foot home. The landlord stated that he did not know how many people were living in the rental unit.

I further find that three or five people is not an unreasonable number of people residing in a home of this size and therefore I find that the landlord has not proven his allegation that the tenant has allowed an unreasonable number of occupants in the unit.

It must be noted that the tenant has the permission of the landlord to rent out the basement and has been doing so from the start of tenancy in October 2004. It must also be noted that the tenant had to end the tenancy of the occupants in the basement to allow the restoration work to be carried out which resulted in a loss of income to him.

The landlord has not provided sufficient evidence to support his allegations that the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and that the tenant has seriously jeopardized the health or safety or lawful right of the landlord.

The landlord stated that his inability to insure the rental home put his property at significant risk. The landlord added that his insurance company took this stand based on the delay in completing the restoration work. The landlord attributed the delay to the presence of occupants in the basement.

I accept the tenant's testimony that the occupants of the basement suite moved out on or about January 17, 2020. The room mate JR who remained in the basement, continued to live in a portion of the basement which had minimal damage from the flood. JR remained in the basement for the duration of the work which started on September 09, 2020 and is yet to be finished.

Based on the above, I find that the delay in the work was not due to the presence of JR residing in the basement of the home.

It is the landlord's responsibility to ensure that the work is done in a timely manner. At the time of the hearing the landlord requested another month to have the work fully complete.

Based on the above, I find that the tenant is not responsible for the delay in the start and completion of the restoration of the home and therefore I find that the landlord has not proven that the tenant has put the landlord's property at significant risk.

Based on the above, I am not satisfied that the actions of the tenant justify bringing this tenancy to an end. Accordingly, I allow the tenant's application and set aside the landlord's notice to end tenancy dated August 29, 2020. As a result, the tenancy shall continue in accordance with its original terms.

Since the tenant has proven his case, I grant him the recovery of the filing fee of \$100.00. the tenant may make a one-time deduction of \$100.00 from a future rent.

### **Conclusion**

The notice to end tenancy is set aside and the tenancy will continue.

I order the landlord to complete the restoration work by November 30, 2020.

The tenant may make a one-time deduction of \$100.00 from a future rent.

The tenant's application for a monetary order is dismissed with 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: October 30, 2020

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Residential Tenancy Branch