



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC & OLC

### Introduction

This hearing dealt with an application by the tenant seeking an order that the landlord comply with the tenancy agreement and *Act* and a monetary claim for compensation related to loss or damage suffered due to a breach of the tenancy agreement and *Act*.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Did the landlord breach the tenancy agreement, *Act* or regulations entitling the tenant to monetary relief?

### Background and Evidence

This tenancy began on January 1, 2004 for the monthly rent of \$650.00 and a \$325.00 security deposit which was paid on December 6, 2003. The current monthly rent is \$802.00.

The tenant is seeking compensation of \$4,812.00 for loss of quiet enjoyment due to unknown and unauthorized individuals accessing the common areas of the rental property.

The tenant, and multiple witnesses, all claim that a homeless person has been gaining access to the rental building during the months of June to November 2010. According to the tenant this individual has a key to access the building.

The tenant also alleges that during an earlier period a different homeless person also had access to the rental property; however, most of the evidence provided related to the alleged access during the June to November 2010 period.

The tenant submits that the concerned occupants of the rental building have taken all steps to have the resident managers address the problem without any success. The tenant submits that the agents of the landlord are not taking any accountability for the concerns of the occupants.

The occupants of the building wrote the landlord an anonymous letter on September 23, 2010 raising their concerns. In this letter the authors claim that the occupants of the building feel unsafe and the occupants are unhappy with the landlord's resident managers. In this letter the unidentified tenants are unhappy about the activities of other occupants of the building and do not raise any issue with respect to the homeless individuals until page 3 of the letter. The tenants wrote:

*His solution was to have a homeless man who was passed out every night supposedly protecting the bike cage from the thieves that, in our opinion, do not exist.*

*There was a fellow, Eric, who resided in the building for the past two years, not in a suite, and not a listed resident of the building, to our knowledge. Admittedly, we have not seen him in a while, but at various times we have all witnessed him coming down from the roof, where he slept in a tent in the BBQ enclosure, the storage rooms downstairs, and for the most of last winter, the boiler room.*

*...The landlords seem to always have a transient around them and generally milling about the building. We do not know these people, they are not listed tenants and they all have keys to the building that we have seen them use alone. We do not know how to address this with the landlord's, as their attitude is often righteous and bullying and again this poses a serious concern.*

It was unclear from the tenant's oral testimony if the current homeless individual had similar access to parts of the building as the other homeless individual, identified as Eric, and had in the letter dated September 23, 2010. It was clear from the tenant's oral evidence that the current homeless individual has been seen entering the building, presumably with a key.

The tenant submits that since June 2010 the resident managers have failed to take any measures to change the locks to the rental building and as a result has jeopardized the

tenant's right to quiet enjoyment pursuant to section 28 of the *Act*. The tenant seeks a total rent reduction for the period of June to November 2010.

The tenant also submits that the rental building has breached municipal fire regulations and alleges that the rental property is not up to current fire code. The tenant also alleges that windows in the rental property have not been repaired and as a result these windows cannot be closed and provide possible means of accessing the building.

The landlord's agents deny the tenant's claims and also dispute the tenant's claim that any of these issues had been raised previously. The agents state that the first notice of any of these issues from the tenant was received with the tenant's application for dispute resolution. The agents argued that they could not respond to the letter of September 23, 2010 because the authors were not identified and they had no knowledge that the tenant was involved in writing this letter.

The agents submit that they have not received any notice of any fire regulations violations from the municipality and that they conduct annual inspections to ensure they are in compliance with all regulations. In addition, the agents submit that the landlord employs a major fire equipment inspection firm to inspect and test all fire equipment annually. With respect to open fire doors and fire extinguishers which are left on the floor, the agents submit that this is commonly done by the occupants of the building or their guests and that they routinely address these issues as they arise.

The agents submitted that the rental property was inspected on December 7, 2010 and no violations were noted or given at that time.

With respect to the windows on the 1<sup>st</sup> and 2<sup>nd</sup> floor the agents submit that the closing assembly has been removed on the 1<sup>st</sup> floor window and a replacement cannot be found and the closing latch is regularly removed. The agents do not know who or how the closing latch is removed. Regarding the 2<sup>nd</sup> floor window the agents use pliers to open and close the window at their discretion.

With respect to the homeless individual accessing the rental building, the agents deny giving this person a key to the building. The agents confirmed that in June 2010 a homeless person was hired for 4 days to act as security for a bike storage locker in the parking area.

The agents deny any knowledge that a homeless person slept in the boiler room or in the BBQ area on the roof. The agents deny any knowledge that the homeless individuals. The agents submit that no complaints have been received prior to the letter of September 23, 2010. The agents submit that no calls or reports have been made to the police.

The agents also submit that the tenant has failed to provide any evidence that any loss or damage was suffered due to these alleged breaches of the Act. The landlord also questioned how the tenant believed her safety was jeopardized when the tenant has been seen interacting with the homeless man in the back alley after dark.

The agents also submit that other occupants of the building have often offered the homeless individual jobs, such as assisting them to move their belongings, and they have no control over these actions.

## Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard. To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

First proof that the damage or loss exists, secondly, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, thirdly, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and lastly proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In the application before me the tenant has the burden of proof.

I dismiss the tenant's application seeking a monetary claim related to loss of quiet enjoyment and due to the rental unit not being maintained in accordance with health and safety laws.

Although I am satisfied that the tenant has observed a homeless man accessing the rental unit, which has been confirmed by several witnesses, the tenant has failed to demonstrate how this has impacted her right to quiet enjoyment. During the period of June to November 2010 when this individual apparently accessed the rental property the landlord received no complaints and there were no apparent disturbances. In fact, the letter of September 2010, which was the first written indication to the resident managers of any concerns, there is only a minor issue raised specifically about the homeless person being observed in the building.

I also am not satisfied that the landlord is in any violation of any health, safety or building standard required by law. The tenant has presented a list of items which she believes are issues; however, the tenant has no specific knowledge or expertise to make any determination that there are safety issues. I am persuaded by the evidence of the landlord that the building is routinely inspected and that no violations have been identified by a qualified inspector.

I find that the tenant's application is premature and without merit. I have insufficient evidence before me to find that the landlord breached section 28 or 32 of the *Act* and I deny the tenant's claim for compensation.

I do recommend the landlords seriously consider the issues raised in the anonymous letter of September 23, 2010 and takes steps to replace the main key to the rental building. Although it is unclear how the homeless individual, or other unauthorized individuals are accessing the building, the tenants concerns could be alleviated by changing the locks to the rental building.

## Conclusion

The tenant's application is dismissed.

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 05, 2011.

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Residential Tenancy Branch