



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC, OLC, LRE, LAT, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order, an order that the landlord comply with the Act and orders suspending the landlord's right to enter the rental unit and authorizing the tenant to change the locks. The landlord filed a cross-application for a monetary order. Both parties seek to recover their filing fees.

### Issues to be Decided

Is the tenant entitled to any of the orders sought?  
Is the landlord entitled to a monetary order?

### Background and Evidence

The parties were involved in a previous dispute resolution hearing on March 8, 2011 to resolve an application by the tenant. At that hearing, the parties agreed to settle the tenant's claims on terms which were recorded in a decision of the same date and included the following:

- The tenancy ends on April 30, 2011.
- The landlord would provide 24 hours written notice to access the rental unit, which notice would include reasons for entry.
- The landlord would clean the tenant's fireplace chimney by March 15, 2011.
- The landlord would permit the tenant to access the carport.
- The parties would not interfere with each other's right to quiet enjoyment.
- The landlord would not bring an application for dispute resolution respecting specific damages which were itemized.

The tenant testified that one day after the hearing, the landlord gave her notice that he would be entering the rental unit on March 11 for the purpose of cleaning the chimney, measuring countertops and doors and taking photographs to advertise the rental unit. The tenant stated that she contacted the Residential Tenancy Branch and was told that

because the Act did not confer upon the landlord a specific right to take photographs of a rental unit, the tenant could deny him entry. The tenant wrote the landlord a letter advising that she would permit him to enter the rental unit to clean the chimney, but not to take measurements or photographs.

The parties agreed that on March 11 the landlord and the chimney technician arrived at the rental unit at which time the tenant advised the landlord that the technician could enter the unit but the landlord could not. The landlord entered the unit anyway at which time the tenant telephoned the police.

The landlord accused the tenant of assaulting him during this interaction. The landlord provided a letter from the technician in which the technician advised that he overheard the verbal interaction between the landlord and tenant. The technician wrote that he overheard the tenant tell the police that the landlord refused to leave her unit but did not hear her tell the police that the landlord was present to address a scheduled maintenance issue. The technician further wrote that he overheard the landlord advise the tenant not to touch him and threaten to file a lawsuit against her if she did. The technician stated that he contacted his office and was advised to leave the rental unit. The chimney cleaning was not performed on March 11 and had not been performed as of the date of the hearing.

The tenant claimed that the landlord was not complying with the terms of the settlement agreement as recorded in the March 8 because he had interfered with her quiet enjoyment of the unit and had not cleaned the chimney. The tenant argued that based on the advice she had received from the Residential Tenancy Branch and her belief that the landlord should not measure countertops and doorways multiple times.

The landlord argued that he took multiple measurements out of an abundance of caution and eventually decided to hire a professional to replace the countertops who wished to take measurements himself rather than relying on those of the landlord.

### Analysis

The parties are clearly unable to communicate effectively and are extremely combative, which has led to the escalation of issues which should not have been anything more than a minor irritation. If the tenant received advice from the Residential Tenancy Branch that the landlord was not permitted to take photographs of the interior of the rental unit, she was incorrectly advised.

The Act empowers the landlord to enter the rental unit upon 24 hours written notice provided the reason for entry is reasonable. As the landlord was advertising the rental

unit in a search for prospective tenants, photographing the rental unit was entirely reasonable. The tenant had the option of moving her belongings out of the way if she did not wish them to be visible in the landlord's photographs. I accept that the landlord's wish to take repeated measurements was entirely reasonable and should have constituted only a minor interference. It was the extreme overreaction of the tenant that caused the tenant to lose quiet enjoyment of the rental unit and that prevented the landlord from complying with the terms of the March 8 settlement agreement which required him to clean the chimney.

I find that the landlord gave proper notice to the tenant, that the reason for entry was reasonable and that her attempts to stop the entry were illegal. I find that the tenant was the author of her loss of quiet enjoyment and I dismiss her claim in its entirety.

Although the tenant acted illegally and unreasonably, I find insufficient evidence to show that she assaulted the landlord. The landlord does not have a right to quiet enjoyment and I find that although the tenant violated the Act, as no monetary loss was proven to be suffered, the only basis under which the landlord could succeed would be if he had advanced a claim for aggravated damages, which must be specifically pled. I dismiss the landlord's claim.

### Conclusion

The claims are 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: March 25, 2011

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Residential Tenancy Branch