



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, LAT, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution made by the Tenant seeking a monetary order for money owed or compensation for damage or loss under the Act or tenancy agreement, for an order to authorize the Tenant to change the locks in the rental unit and to recover the filing fee for the Application.

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.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary relief sought?

### Background and Evidence

This tenancy began in April of 1999, with the parties entering a standard term, written tenancy agreement.

The Tenant makes several claims regarding a particular Agent for the Landlord.

The Tenant claims that the Agent has harassed her from January 2, 2010, until May 7, 2011.

The Tenant claims on March 10, 2010, the Agent committed email fraud against her.

The Tenant claims the Agent illegally entered her rental unit from January 9 to 16, 2011.

The Tenant claims that the Agent for the Landlord has harassed her to provide the Landlord with post dated cheques for rent payments. The Tenant submits that from March 15 to 23, 2010, the Agent left a series of voice mail messages demanding post dated cheques for rent payments.

The Tenant submits there is nothing in her tenancy agreement that requires her to pay the Landlord using post dated cheques.

The Tenant has been providing her rent payments on the first day of each month, as required under the tenancy agreement. She has another renter in the building witness the payment, as the Tenant is concerned that the Agent for the Landlord is intentionally not cashing her cheques until later in the month, in order to make it look like the Tenant pays her rent late. The Tenant's concern arises from an alleged instance in the fall of 2007 when the Agent did not deposit the rent cheque until later in the month.

The Tenant submits that the ongoing requests from the Agent for post dated cheques constitute harassment.

In further argument regarding harassment, the Tenant alleges that the Agent has had two other renters in the building harass the Tenant with noise complaints. The Tenant alleges these renters, who used to live below her, were personal friends of the Agent.

The parties agree that the renters have done some minor work in the building for the Agent, such as vacuuming the halls. The Tenant alleges these two renters would bang on the ceiling every time the Tenant walked across the floor. These occupants also banged on the heat radiators and walls at least 10 times a day, according to the allegations of the Tenant. The Tenant alleges these other occupants made fake noise complaints to the Agent for the Landlord. On one occasion a renter of the unit below left her a threatening note. The police were involved with this complaint. The Tenant alleges she had to leave town for five days as she was concerned for her safety following the note.

The Tenant alleges the Agent hovered over her on January 18, 2011, and kicked her boxes and tampered with her belongings, which had been moved out of the storage locker due to a flood. The Tenant testified that the Agent also made a rude face at her at this time.

The Tenant also alleges that on May 7, 2011, the Agent for the Landlord violently yanked the Tenant's arm away from the laundry room door. The Tenant alleges, "This

assault gave me a sore arm for 2 days. I suffered muscle spasms in my right shoulder and had problems sleeping for 2 nights in a row.” [Reproduced as written.]

The Tenant alleges the Agent has committed email fraud. The Tenant submits that on March 10, 2010, the Agent left a copy of an email at her door, claiming the rent was overdue, when it was not. The Tenant alleges this is fraudulent, as the Tenant had blocked the Agent from sending her emails some time before. The Tenant claims that the, “... email is clearly fabricated because the sender and recipient lines are blank.” [Reproduced as written.]

The Tenant also claims the Agent has illegally entered the rental unit. The Tenant submits that during the week of January 9, 2010, the Agent left a note on the Tenant’s table in the rental unit indicating the Agent had entered because of a complaint about humidity on the ceiling of the rental unit below.

On January 16, 2011, there was a flood in the storage area of the building where the rental unit is located. The Tenant submits that the Agent illegally entered the rental unit on the pretext that she was checking the water pressure. The Tenant submits the Agent left her a voice mail indicating she was entering the rental unit. The Tenant submits there was no need to check the water pressure in the rental unit as the water had been restored elsewhere in the building.

For the above the Tenant claims as follows:

a.	Land title search fee	50.29
c.	Aggravated damages/harassment	1,500.00
d.	Breach of Tenant/Landlord contract	900.00
e.	Travel expenses for emergency leave	248.20
f.	Filing fee	50.00
	<b>Total claimed</b>	<b>\$4,248.49</b>

In reply to the Tenant's claims, the Agents for the Landlord testified that the Tenant was periodically asked to provide post dated cheques for her rent payments.

The Agents testified that most renters in the building provide post dated cheques, but acknowledged there is nothing in the tenancy agreement which requires the Tenant to provide post dated cheques.

The Agent denied committing email fraud. The Agent testified she wrote the email, printed it out and left it at the rental unit door as a note.

In regard to the allegations of illegal entry, the Agent testified that on January 9, 2010, there was a complaint from the unit below the subject rental unit regarding water dripping from the ceiling. The Agent testified she entered the rental unit to see if there was a water leak. She left a note for the Tenant informing her she had entered the rental unit.

The Agent testified that on January 16, 2011, there was a major flood in the building where the rental unit is located. The Agent explained there was a period of 20 hours where there was no water service to the building. The Agent testified that once the water was restored, she had to enter all the rental units on the top floor, including the subject rental unit, to open the water valves in order for the air to bleed off the pipes.

In regard to the noise complaints of the other renters below the subject rental unit, the Agent testified that the occupants below the Tenant were convinced the Tenant was making noise, and they were responding to her noise.

The Agent acknowledged one of the renters left the Tenant a "nasty note", however, the police were called and spoke with the writer of the note. The Agent denies that she was aligned with other renters to harass the Tenant. The Agent testified that these renters have left the building.

The Agent testified that she was opening the laundry room door and could not see the Tenant was holding the door knob on the other side. She testified that the Tenant did not suggest or complain at the time that she was hurt when the door opened.

### Analysis

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

I dismiss the Tenant's Application without leave to reapply for the reasons described below.

When making a claim for damages under a tenancy agreement or the Act the party making the allegations, here the Tenant, has the burden of proving their claim.

Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

In regard to the claim of email fraud, policy guideline 24 sets out, in part, that:

Fraud is the intentional use of false information to obtain a desired outcome.

Fraud must be intended. An unintended negligent act or omission is not fraudulent.

In this instance, the Agent used an email printed out as a note to inform the Tenant of a perceived late payment of rent and delivered it to the rental unit door. The Agent believed the rent was late. Furthermore, the Agent freely admits leaving the note at the rental unit and did not allege it was sent via email. Therefore, I find the Tenant has insufficient evidence to prove the Agent intentionally used false information to obtain a desired outcome.

In regard to illegal entry to the rental unit, I find the Agent did not enter the rental unit in breach of the Act. Under section 29(1)(f) of the Act, the Landlord may enter the rental unit if an emergency exists and the entry is necessary to protect life or property.

In the two instances complained of, the Agent had reasonable cause to believe an emergency existed, due to a report of water on the ceiling of the unit below. The other entry was part of the ongoing transaction of the emergency and was to relieve air pressure in the water pipes following serious flooding. The Agent was at the very least protecting the Landlord's property, by ensuring the rental unit had no water leak to affect the unit below and by relieving the air in the water lines.

Furthermore, I find it unlikely the Agent entered the rental unit with any nefarious intent in view of the fact that the Agent informed the Tenant in both instances that she had entered, or was planning on entering, the rental unit.

As to the Tenant's allegations of harassment arising from the requests for post dated cheques, I find the Tenant has failed to prove harassment occurred. Furthermore, I find

the Tenant did not take all reasonable steps to mitigate, or act promptly, in objecting to the requests for post dated cheques made by the Agent. The main instances the Tenant complains of occurred in March of 2010. The Tenant did not explain why she waited over a year to complain of this alleged harassment.

Furthermore, the Agent has simply requested payment of rent by the Tenant providing post dated cheques. The Tenant had insufficient evidence to prove these requests were vexatious or made in an intimidating fashion.

I find the Tenant had insufficient evidence to prove the Agent aligned herself with other renters in the building to allegedly harass the Tenant.

As to the allegations the Agent was rude to the Tenant or that she made allegations the Tenant was late paying rent, in *Canadian Tort Law*, 6th ed., by Allen M. Linden, the author states the following (at p. 54):

Not every insult hurled will yield tort liability. The courts cannot protect us from every practical joke or unkind comment. It is not yet tortious to embarrass or to swear at another person, even if it upsets that person. Free speech requires that individuals be permitted to express unflattering opinions about one another. It is better for humans to develop tougher hides than to seek damages for every insult.

I also find the Tenant had insufficient evidence to prove she was injured by the Agent opening the door to the laundry room. For example, the Tenant provided no medical evidence which proves she was injured by the Agent.

### Conclusion

The Application of the Tenant is dismissed. The Tenant has insufficient evidence to prove a damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, and that she took all reasonable measures to mitigate her loss.

This decision is final and binding on the parties, except as otherwise provided for by the Act.

I make this decision on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 20, 2011.

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Residential Tenancy Branch