



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes MDNC OLC LRE O FF

### Preliminary Issues

Upon review of the Tenant's application for dispute resolution I noted that the Tenant had applied to recover the cost of the filing fee however I noted he did not pay a filing fee. The Tenant confirmed he did not pay a filing fee therefore I amended his application to withdraw this request, in accordance with section 64 (3)(c) of the Act.

After all participants had checked into this proceeding the Tenant's Advocate objected to the Tenant's mental health worker being allowed to testify on behalf of the Landlord and against the Tenant. The Advocate cited patient/health worker confidentiality and requested that the Witness be excused from the proceeding.

After careful consideration of the Advocates request to dismiss the Landlord's Witness, I excused the witness in accordance with #11.11 of the *Residential Tenancy Branch Rules of Procedure*. I did however allow the Landlord to provide hearsay evidence regarding evidence that was to be presented by this witness.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement, and Orders to have the Landlord comply with the Act, regulation, or tenancy agreement, to suspend or set conditions on the landlord's right to enter the unit, and for other reasons.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the

testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Tenant entitled to a Monetary Order?
2. Should the Landlord be ordered to comply with the *Residential Tenancy Act*?
3. Should the Landlord's right to enter the rental unit be suspended or have conditions set for entry?

Background and Evidence

The parties agreed the Tenant has occupied the rental unit since June 1, 2010, initially for short fixed term periods and recently the tenancy has converted to a regular month to month tenancy. Rent is currently subsidized at \$340.00 per month and the Tenant was required to pay \$300.00 on May 26, 2010 as the security deposit based on market rent.

The Landlord confirmed receipt of the Tenant's evidence except for a June 21, 2012 typed statement that had been submitted with the Tenant's application for dispute resolution. The Landlord acknowledged receiving the rest of the Tenant's evidence which was also submitted to the *Residential Tenancy Branch* and included 18 pages of documents. The documents were copies of notice of entry forms issued by the Landlord, two legal advice documents, the February 29, 2012 warning letter issued by the Landlord to the Tenant, and the Tenant's typed statement.

The Tenant's Advocate stated he only received pages 1 through 30 of the Landlord's evidence and did not receive page 31 which consisted of a "note to file" dated March 27, 2012. The Landlord affirmed that she had personally served the Tenant with a sealed envelope containing the exact same documents (31 pages) and their cover letter as she had submitted to the *Residential Tenancy Branch*. The Advocate could not provide testimony as to how the evidence was received from the Tenant as it was left with his reception staff.

The Tenant submitted that he has been treated inappropriately by the Landlord's staff, specifically C.H. and G.M. He asserted that on many occasions these staff members have screamed and spoke disrespectfully to him. He submitted that he suffers from health issues including post traumatic stress disorder (PTSD), anxiety and depression

and that he has difficulty dealing with aggression from other people; however he tolerates it.

The Tenant spoke about past incidents where he felt he was treated disrespectfully and argued that G.M has threatened his tenancy by stating things like “if you don’t like it here you don’t have to live here”.

The Tenant spoke to incident reports provided at pages 27, 28, and 29, acknowledging in some cases that he had been upset however he denied that he raised his voice or that the events on page 28 even occurred.

The Tenant submits that while he normally receives notices of entry for pest control treatments there have been two or three times that he allowed entry without proper notice. The Tenant was not able to provide the dates of these entries however he recalls seeing the pest control staff in the hallway and allowed them access after they requested it.

The Tenant claims that the Landlord refused to reschedule the pest control treatments at a time he had an eye infection. He stated he had nowhere else to go and therefore the Landlord should have rescheduled the spraying instead of going ahead and aggravating his infection.

The Tenant summarized his submissions as wanting to be treated respectfully, with no yelling, and have the Landlord’s staff be considerate of his health conditions.

In response, C.H. disputed the Tenant's accounts of past events stating he does not yell at the Tenant. He argued that he has been employed with this Landlord for ten years and he has worked with a lot of tenants who suffer from mental health issues so he knows how to deal respectfully with them.

C.H. stated that he is the staff member responsible for posting the notices of entry for pest control and that the staff have been requested to provide copies of all notices to the Tenant’s mental health worker, T.P., as well as providing copies to the Tenant. They have been instructed to contact T.P. regarding any involvement with this Tenant.

C.H. argued that there has never been an entry without proper notice; however there have been two or three occurrences when they have entered without T.P. being present. During these times T.P. has been aware of their entry into the Tenant’s suite and is accessible by phone in the event that he is needed to assist with the Tenant.

G.M. submitted that he too is a long term employee of approximately nine years and that he does not yell at the Tenant or speak inappropriately to him. He recalled an incident where he called the Tenant over to speak with him to which the Tenant responded by saying something about "don't yell at me". G.M. asserted that he had not been yelling at the Tenant, rather speaking at a volume to ensure the Tenant had heard him from across the room.

The Landlord L.S. pointed to their evidence which includes copies of the numerous notices of entry and a letter from the pest control company which confirms their product is neither an aerosol nor an irritant to the eyes. She confirmed that they all work very closely with T.P., the Tenant's mental health worker, and they keep him informed of all planned interactions with the Tenant.

The Landlord stated that she meets with T.P. a minimum of once per week to discuss any concerns or problems with the Tenant and that he assists in working through any challenges. She noted that when the Tenant requested the pest control spraying be delayed due to his eye infections T.P. had offered the Tenant a temporary accommodation but he refused.

The Landlord submitted that they dispute everything the Tenant has submitted. She noted inconsistencies with the Tenant's testimony surrounding notices that were or were not served; she pointed out that there was no medical proof provided by the Tenant; and she argued that they are all professional when dealing with the Tenant. She has long term staff that deal with numerous tenants and that they work hard to provide a safe, secure, clean place for these tenants to reside.

In closing, the Tenant's Advocated submitted that the Landlord's incident reports and testimony was not supported by statements from other tenants or documentary evidence. He requested that I prefer the Tenant's submissions based on an assessment of credibility and that I award the Tenant \$2,500.00 loss of quiet enjoyment (10 months x \$250.00) plus \$2,000.00 in aggravated damages in having to deal with the staff's unprofessional behaviour. He seeks orders to limit the Landlord's entry into the unit to only after the provision of proper notice and provide consideration of the Tenant's request to reschedule due to health issues. The Tenant argued that T.P. did not offer an alternate place to stay; rather he told him to go to the hospital.

### Analysis

Neither the Tenant nor his Advocate could provide testimony whether the Landlord was served the Tenant's June 21, 2012 typed statement. Therefore, in the absence of proof to the contrary, I find the Landlord was not served with this document. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Landlord has not received the Tenant's June 21, 2012 statement, I find that it cannot be considered in my decision. I did however consider the Tenant's testimony.

The Tenant's Advocate stated he did not receive a copy of page 31 of the Landlord's evidence which included a "note to file" dated March 27, 2012 which speaks to a conversation between a staff member at the advocacy office and the Landlord's staff member whereby the Tenant's "short fuse" is acknowledged. I accept the Landlord's submission that this document was included in the evidence package delivered to the Tenant; therefore it will be considered in my decision. That being said, this document holds very little weight in my decision as there is no supporting testimony from either party mentioned in this note. I have attached a copy of the note to file to this decision to ensure the principals of natural justice have been upheld.

I have carefully considered the aforementioned and all the documentary evidence except that which was excluded above.

When a Tenant makes application for dispute resolution the onus lies on the Tenant to prove their case. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the Tenant has the burden to prove he suffered a loss of quiet enjoyment for a ten month period and that he is entitled to aggravated damages. The Tenant's evidence consisted primarily of verbal testimony which was disputed by the Landlord. The Landlord had also relied on a substantial amount of documentary evidence which I find proves the Landlord has been regularly providing written notices of entry. Based on the aforementioned I find the disputed verbal testimony insufficient to meet the Tenant's burden of proof. Accordingly I dismiss the Tenant's claim in its entirety.

Conclusion

I HEREBY DISMISS the Tenant's claim.

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: July 27, 2012.

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Residential Tenancy Branch