



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC LRE

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 4, 2013, 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 to obtain orders to have the Landlord comply with the Act, regulation, or tenancy agreement, and to suspend or set conditions on the Landlord's right to enter the rental unit.

The Landlord signed into the teleconference hearing sixteen minutes late and was informed of the affirmed testimony that had been provided by the Tenant up to that point. The parties acknowledged receipt of evidence submitted by the other and both provided affirmed testimony.

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 monetary compensation for loss of quiet enjoyment?
2. Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?
3. Should the Landlord's access to the rental unit be suspended or have conditions ordered?

### Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: a key fob record of who has entered his rental units; written noise complaints issued to the Landlord; his written complaints about items being stolen from his rental unit; and a November 19, 2012 letter written by the Landlord.

The Landlord stated they submitted documentary evidence via fax on January 30, 2013 at 2:10 pm. The Tenant confirmed receipt of the Landlord's evidence; however I could not find a record of the Landlord's evidence being received by the *Residential Tenancy*

*Branch* prior to this hearing. I informed the Landlord that the evidence had not been matched to the file in time for this proceeding nor was there an electronic record of the evidence; therefore, I will consider his oral testimony.

The following facts, as discussed during this proceeding, were not in dispute:

- The rental properties were located in a newly constructed building that was designated social housing;
- The society which manages the building operates 24 hours a day, 7 days per week, 365 days per year, and provides various levels of care for the tenants who are primarily hard to house, marginalized adults;
- The Tenant first moved into unit #1107 on May 22, 2012 on a month to month tenancy;
- After receipt of numerous noise complaints from the Tenant the Landlord moved the Tenant into unit # 402 on approximately November 10, 2012;
- The Tenant's subsidized rent is due on the first of each month in the amount of \$375.00 and he paid \$187.50 as the security deposit;
- Access into each rental unit is through the use of a computerized key fob system which creates electronic records of entry;
- The manager of programming meets with the Tenant on average four times per week to discuss the Tenants concerns;
- The manager arranged to provide the Tenant with reports on who is accessing his rental unit.

The Tenant advised that he would like some money for the illegal entries into his apartment because he is of the opinion that the people entering his unit are stealing his possessions. He also requests that the Landlord be issued Orders to comply with the Act and provide him with proper written notice before entering his unit.

The Landlord confirmed that he has had several discussions with the Tenant about the allegations of theft. He advised that he has assessed and investigated every situation brought up by the Tenant. He noted that it is nothing more than "he said she said" and there is no proof to substantiate the Tenant's allegations. The society keeps records of entry in their log books and during the course of this proceeding the Landlord clarified some of the entries which the Tenant has alleged as being illegal as follows:

11/13/2012	Contractors attended to check heaters and valves at Tenant's request
11/10/2012	Manager assisted Tenant in moving into unit #402
11/09/2012	Supervisors entry
11/05/2012	Contractors preparing room for new tenant

The Landlord submitted that their services require them to enter rental units for various reasons such as: monthly building checks, to administer medications; and for emergency checks if tenants do not respond to their calls. He emphasized that the type of clients or tenants they house are usually transitioning from living on the streets and

many have unique needs. He advised that they always post notices of entry for monthly inspections and repairs but that in cases of potential emergencies there is no time to post a notice. He argued that their work is designed to attempt to meet every tenant's needs.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

Sections 28 and 29 of the Act outline a tenant's right to quiet enjoyment and a landlord's right to enter a rental unit. I have copied those sections of the Act to the end of this decision.

I have carefully considered the forgoing and all documentary evidence that was before me and I accept that other tenants were too noisy and were bothering the Tenant. That being said, the Landlord has been working closely with the Tenant to resolve his concerns and has taken reasonable actions to resolve the situation. This is support by the fact that the Landlord relocated the Tenant from unit #1107 to unit #402 and by the ongoing meetings and discussions being conducted with the Tenant.

Although the Tenant has proven that the Landlord's staff has entered his rental unit, without written notice on some occasions, I do not find sufficient evidence to prove those entries were in breach of the Act. I make this finding in part because the staff members entered to prepare the suite for the Tenant to move in and also at times to assess or complete repairs as requested and approved by the Tenant. Furthermore, there is insufficient evidence to prove theft occurred during those entries. Accordingly, I dismiss the Tenant's claim for monetary compensation for breach of the Act, regulation or tenancy agreement.

I accept that the Landlord is aware of their obligations as set forth under the Act, regulation or tenancy agreement. Therefore orders to have the Landlord comply with

the Act, regulation or tenancy agreement and to suspend or set conditions on the Landlord's right to enter the rental unit are not warranted at this time.

Conclusion

I HEREBY DISMISS the Tenant's application in its entirety.

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: February 07, 2013

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Residential Tenancy Branch

### **Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

