



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, ERP, RP, RR

### Introduction

This hearing was originally scheduled for November 28, 2012 to deal with the tenants' application for Orders for repairs, including emergency repairs; and, Orders for compliance with the Act, regulations or tenancy agreement. The tenants also applied for authorization to reduce rent and a Monetary Order for damage or loss under the Act, regulations or tenancy agreement.

Due to the multiple issues and requests contained in the Application the issues were prioritized so that the tenants' requests for Orders for repairs and compliance were heard in the time allotted on November 28, 2012. An Interim Decision was issued on November 29, 2012 and included certain repair orders.

The hearing reconvened on January 9, 2013 to deal with the tenants' monetary claim and request for a rent reduction for service or facilities agreed upon but not provided.

Both parties appeared or were represented during both scheduled dates of hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

During the re-convened hearing of January 9, 2012 I confirmed the status of the repair orders made November 28, 2012 and have reflected such in this Decision. The Interim Decision is to be read in conjunction with this Decision.

### Issue(s) to be Decided

1. Has the landlord satisfied the repair orders issued November 28, 2012?
2. Has the tenant established an entitlement to a rent reduction for cable and internet services terminated or restricted?
3. Has the tenant established an entitlement to monetary compensation for damage or loss under the Act, regulations or tenancy agreement?

## Background and Evidence

### ***Repair orders***

The landlord was issued three repair orders by way of the Interim Decision dated November 28, 2012. Upon hearing from both parties, I have summarized the status of each of those orders below:

1. The kitchen sink has been repaired and is no longer leaking water onto the floor.
2. The landlord purchased a plug-in appliance in order to provide the tenant with at least two working cooking burners.
3. The landlord cut access holes in the drywall drop-ceiling of the common laundry room and, upon observing mould on the underside of the painted concrete ceiling, removed the entire drywall drop-ceiling. The concrete ceiling was then scraped, sprayed with mould killer, and then paint with a mould inhibiting paint. Mould has not reappeared as of January 9, 2012.

### ***Rent reduction***

Starting in November 2012 the tenant acquired his own cable and internet account at a cost of approximately \$37.00 per month. The tenant is seeking authorization to reduce his rent by this amount.

The tenant was of the position that he lost some of the cable channels because the landlord had them disconnected with the service provider. I noted the tenant had not provided a copy of his tenancy agreement to establish what was to be provided to him. The tenant testified that he was uncertain as to what the tenancy agreement provides insofar as cable services.

The landlord stated the tenancy agreement provides that the tenant is to be provided "basic cable and WiFi". The landlord was of the position the tenant has been provided basic cable by the landlord and suggested the tenant acquired his own cable account to obtain other channels that are not included in basic cable.

The tenant confirmed that he was still receiving some channels when he acquired his own cable account and indicated that his main motive behind obtaining his own cable account was to acquire an internet connection as it was less expensive to bundle the two services. The tenant submitted that he needed to get an internet connection because the WiFi signal in his unit was extremely weak.

The landlord submitted that the signal strength is satisfactory but that when multiple tenants download movies or games the internet speed slows down due to bandwidth limitations. The tenant was adamant that his inability to receive satisfactory WiFi signal was not related to bandwidth but to poor signal strength.

The assistant manager resides across the hall from the tenant and testified that he has satisfactory signal strength in his unit. The landlord suggested the tenant's inability to receive satisfactory WiFi signal may be due to his own equipment. During the hearing, I asked that the assistant manager take his own laptop computer into the tenant's rental unit to test the signal strength. During the test the tenant confirmed that the assistant manager's laptop appeared to have a full strength WiFi signal.

### ***Monetary compensation***

In filing his Application for Dispute Resolution the tenant requested \$21,750.00 in compensation for damage or loss under the Act, regulation or tenancy agreement from the landlord. In support of this amount, the tenant provided a list of 12 items for which he is seeking compensation.

During the adjournment the tenant provided a written submission seeking to increase the above claim by a further \$2,000.00. I did not consider this request as the Application was not amended in accordance with the requirements of the Act and Rules of Procedure.

I noted that the first 11 items on the tenant's request for compensation did not appear to relate to damage or loss suffered by the tenant. The tenant confirmed that these claims were arbitrarily determined and were punitive in nature. I informed the tenant that I am not authorized to grant punitive damages; that awards are intended to compensate a party for verifiable losses that party has suffered due to a breach of the Act, regulations, or tenancy agreement by the other party. I found the first 11 items claimed by the tenant did not constitute claims for damage or loss and I summarily dismissed those 11 claims.

With respect to the 12<sup>th</sup> part of the monetary claim the tenant sought \$2,250.00 for loss of quiet enjoyment and I proceeded to hear from the parties on this portion of the monetary claim. The amount was calculated a three months rent, or 25% of the rent paid during the year the tenancy had been in affect at the time of filing.

The tenant submitted that he has suffered abuse and harassment at the hands of the landlord. I asked the tenant for specific examples. I have summarized the tenant's submissions and the landlord's responses below:

- Multiple eviction notices
  - The tenant submitted that the landlord issued a total of 4 eviction notices to the tenant in the months of September 2012 and October 2012.
  - I was aware that the parties participated in a previous dispute resolution hearing with respect to a 1 Month Notice to End Tenancy and I noted the tenant had not provided copies of the other eviction notices he was referring to.
  - The tenant indicated he had two other eviction notices in his possession but that he did not think it was necessary to supply those as evidence for this proceeding.
  - The landlord stated that there was one other eviction notice given to the tenant by a replacement manager and that the eviction notice contained errors making it unenforceable.
- Assistant manager glares at and watches tenant's guests when they come to his door.
  - This issue was raised and dealt with by way of the Interim Decision.
- Harassment
  - The tenant submitted the landlord sends the police to the tenant's unit as evidence by police cards left on the tenant's door.
  - The tenant submitted that the assistant manager made rude and inappropriate comments to the tenant about cooking his pet rabbit.
  - The landlord submitted that the assistant manager was not working as the assistant manager at the time the comments were made about the tenant's rabbit. Further, the comments were intended to be a joke and that at the time the tenant appeared to take it as a joke.
- Failure of landlord to respond to repair requests
  - The tenant submitted that the landlord has only recently responded to the repair issues because the tenant raised the issues by way of an Application for Dispute Resolution.
  - I noted that the tenant had not produced evidence that he had put his repair requests in writing before filing his Application for Dispute Resolution.
  - The landlord had indicated the tenant had not complained about some of the issues for which he sought repairs at the last hearing.

The tenant referred me to his written submissions in support of other assertions related to loss of quiet enjoyment.

### Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons with respect to the issues not previously dealt with in the Interim Decision.

#### ***Repairs***

Upon hearing from both parties on January 9, 2012, I am satisfied the landlord has completed the repairs that I ordered to be made on November 28, 2012 and I make no further repair orders against the landlord.

#### ***Rent reduction***

Upon confirmation that the assistant manager is able to receive WiFi signal in the tenant's rental unit I find the tenant has not satisfied me that the landlord has terminated or restricted WiFi signal.

In the absence of a copy of tenancy agreement I accept the landlord's testimony that the tenant is entitled to "basis cable" under the terms of his tenancy agreement. Having heard the tenant was receiving some cable channels before acquiring his own account I accept that the tenant was being provided "basic cable" by the landlord. Further, the tenant's only documentary evidence related to a cable bill was page 1 of a 3-page cable/internet statement. In the absence of all three pages I find I am unable to determine the services the tenant subscribed to under his own account. I do note that on the one page provided to me there is a charge for Pay Per View or Video on Demand. I find this consistent with the tenant's desire to acquire not only internet, but other cable services, for which the tenant is not entitled under his tenancy agreement as suggested by the landlord.

In light of the above, I find the tenant chose to acquire a cable/internet account for his own reasons and it is not attributable to the landlord terminating or restricting services agreed to by the tenancy agreement. Therefore, I find the tenant has not established a basis for a rent reduction and I dismiss this portion of the tenant's application.

#### **Loss of quiet enjoyment**

Under section 28 of the Act a tenant is entitled to quiet enjoyment. Quiet enjoyment includes, but is not limited 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.

As the tenant is the applicant in this case, the tenant bears the burden to establish that the landlord has breached his right to quiet enjoyment. 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.

Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides policy statements as to the intent of the legislation with respect to the right to quiet enjoyment. The policy guideline provides examples where a breach of quiet enjoyment may be found. It further goes on to state that temporary discomfort or inconvenience is not a basis for finding a breach of quiet enjoyment.

In the absence of copies of eviction notices issued to the tenant I find the disputed verbal testimony insufficient to satisfy me that the landlord has issued multiple eviction notices to the tenant in an attempt to harass or persecute the tenant.

As recorded in my Interim Decision I find the disputed verbal testimony insufficient to satisfy me that the assistant manager is spying on the tenant or has breached the tenant's right to reasonable privacy when I consider the assistant manager lives across the hall from the tenant and part of his job is to investigate loud noises. As explained to the tenant during the hearing, the landlord has an obligation to protect the other tenants' right to quiet enjoyment. Thus, if there are loud noises coming from the rental unit or the common area in front of the rental unit, the observation by the assistant manager is reasonable and lawful. I also heard that the assistant manager smokes and I find it reasonable to expect that he would smoke in his doorway or the common area outside his door.

In summary, I find insufficient evidence that the actions of the assistant manager amount to is spying on, or stalking as alleged in the tenant's written submission, the tenants. Nevertheless, I find it appropriate to caution the landlord to be aware of and ensure all agents acting on behalf of the landlord respect the tenants' right reasonable

privacy by acting in a manner that does not exceed the landlord's right to lawfully manage the property.

While I accept the tenant found previous comments about his pet rabbit to be offensive at the time of the hearing, I find I am uncertain as to whether the tenant took offence to these comments when they were made. Nor am I satisfied that the comments were made by the assistant manager in the capacity of the landlord's agent at the time. Finally, the landlord has acknowledged and agreed that agents for the landlord should not make comments that could be taken as offensive by a reasonable person. Therefore, I find it sufficient to caution the landlord that future offensive comments are unlikely to be tolerated.

I find the tenant's copy of two police cards does not satisfy me that the landlord is sending the police to the tenants' door. In fact, the tenant pointed out that the landlord denied doing so on particular occasion. Again, the tenants live in a multiple unit building and, from the tenants own submissions, it would appear the property is well known to police. Considering the tenant acknowledged that he allows street people and/or drug addicts in his unit, I find it likely the police attend the tenant's unit on their own accord. Therefore, I find the tenant's belief that it is the landlord that is sending the police to the tenant's door to mere speculation.

If the police approach the landlord to enquire as to the whereabouts of a person of interest I find the landlord is not breaching the tenant's right to "reasonable" privacy by providing such information to the police. It is important to point out to the tenant that his guests do not have the right to reasonable privacy under the Act.

With respect to repair requests, in the absence of evidence of written repair requests from the tenant, I find insufficient evidence the landlord has failed to act reasonably. I outlined the expectations for repair requests in the Interim Decision and I encourage the parties to review those expectations and act accordingly in the future.

Finally, upon review of the tenant's written submissions I find the tenant's submissions largely amount to assumptions and opinions about the landlord's actions which are not relevant or sufficiently supported by other evidence. I also found considerable reservations about the tenant's credibility. I make these findings based upon the following considerations, among others:

- The tenant's references to the manager as "the drunk";

- Expression of the tenant's views that compensation the tenants may receive if the landlord redevelops the property is inadequate and permit the landlord to escape "unscathed";
- the punitive nature of the vast majority of the tenant's monetary claim against the landlord;
- the tenant acknowledged living in a building with "rough" inhabitants where drug addicts and police presence are not uncommon yet the tenant attributes a vandalized bicycle and missing windshield wiper blade to the landlord without evidence of such; and,
- the tenant was adamant that he suffered a lack of WiFi signal due to the landlord's failure to repair or rectify the system when it was proven during the hearing that the WiFi signal was working to a satisfactory level.

Further, it is readily apparent to a reasonable person that the tenant is acting out of vengeance or retaliation attributable to the landlord's previous attempt to evict him.

Claims based upon retaliation, assumptions and opinions are insufficient to find the landlord has violated the tenant's right to quiet enjoyment.

For the reasons provided above, I deny the tenant's claim for monetary compensation for loss of quiet enjoyment.

As stated to the parties several times during the hearing, should this tenancy continue the parties would be well served by conducting themselves in a manner that fosters harmony as opposed to further acrimony. Conducting oneself litigiously is often not seen as a way to foster a successful and harmonious tenancy relationship.

### Conclusion

This decision is to be read in conjunction with an Interim Decision issued November 29, 2012.

The repair orders issued to the landlord by way of the Interim Order has been fulfilled and I make no further repair orders to the landlord. The remainder of the issues raised by the tenant in this application have been dismissed.

The landlord has been cautioned to ensure all agents acting on behalf of the landlord are aware of the tenant's right to "reasonable privacy". The landlord has been cautioned that future comments to the tenant that a reasonable person would consider offensive are not appropriate and unlikely to be tolerated.



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 5, 2013

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Residential Tenancy Branch

