



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, O

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement and a monetary order.

The hearing was conducted via teleconference and was attended by the female tenant and the landlord.

### Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to an order to have the landlord comply with the *Act*, regulation or tenancy agreement and to a monetary order for compensation, pursuant to Sections 28, 32, 67, and 72 of the *Act*.

### Background and Evidence

The tenant testified the tenancy began on May 1, 2012 as a month to month tenancy for a current monthly rent of \$900.00 due on the 1<sup>st</sup> of each month with no security deposit paid. The parties agreed the landlord reduced the rent effective on December 1, 2012 by \$150.00 per month. The landlord testified she reduced the rent just to try to help out the tenants.

The parties agree that a portion of the yard is fenced off as a kennel for the landlord's dogs. The landlord submits that she has recently had gravel laid and her intention is to have a concrete pad so she can simply hose off the area. The tenant submits that the landlord does not clean up the kennel area and as a result the tenant must endure the odours.

The tenant also submits the landlord has, since November 2012 started throwing the contents of the bottom of her birdcages over her balcony and that it is landing on the tenants' deck and clothes that are on the clothesline. The landlord acknowledges that she did this once but when the tenant complained she did not do it in area that would affect the tenant.

The tenant also submits that the landlord's dogs are loud when they are in the house and that the tenants cannot hear their television when the dogs are running around the house. The tenant submits that the noise is caused by the dogs' feet on the floor. The landlord testified the tenant has never brought this to her attention before this Application.

The tenants' Application originally requested \$300.00 for compensation for this as a disturbance calculated as \$50.00 per month for a period of 6 months but at the end of the hearing she lowered her claim to \$150.00 for this period.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

In the case of verbal testimony, I find that where testimony is clear and both the landlord and tenant agree on the events, there is no reason why such testimony cannot confirm any events. However when the parties disagree with what has occurred, the disputed testimony, by its nature, makes it virtually impossible for a third party to interpret what has actually occurred.

As the burden rests with the applicant, in this case the tenant, to provide sufficient evidence that the events occurred that contributed to her claim that the landlord has violated the *Act*, regulation, or tenancy agreement and her testimony is disputed by the landlord she must provide additional evidence to support her claim.

As the tenant has provided no additional evidence that the landlord has dumped her birdcage bottoms in a manner that would be disturbing another occupant and or that the landlord's dogs have caused ongoing disturbances when inside I find the tenant has failed to provide sufficient evidence that the landlord has violated the *Act*, regulation or tenancy agreement.

In relation to the issue of the dog feces in the kennel area, I accept the parties agree the landlord has the kennel and the landlord has laid gravel in the area. However, the

tenant has provided no evidence to substantiate that the kennel area is either a common area or a portion of the residential property that she was granted exclusive possession of during the tenancy. Again, I find the tenant has failed to provide any evidence that the landlord has violated the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons noted above, I dismiss the tenants' 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: April 23, 2013

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Residential Tenancy Branch

