



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlords: OPC, FF  
Tenant: CNC, MNDC, OLC, RR, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlords sought an order of possession. The tenant sought to cancel a notice to end tenancy; an order to have the landlord comply with the Residential Tenancy Act (Act), regulation or tenancy agreement; a rent reduction; and a monetary order.

The hearing was conducted via teleconference and was attended by both landlords; the tenant and his witness.

I note that the tenant had provided some phone numbers throughout his evidence to confirm information, such as his physician and a website owner who might confirm the tenant's work information. I also note that with respect to the website owner the tenant states any call to him be restricted to only the "Rentalsman".

As this hearing was the opportunity for both parties to provide evidence, witness testimony, and their own testimony as well as an opportunity for the respondent to question the tenant's evidence and witness I cannot have any *ex parte* communication with either party or their witnesses and I have not contacted any of the individuals named.

The landlord had provided evidence and began to provide testimony regarding events that have occurred since the 1 Month Notice to End Tenancy for Cause. I advised the parties that I would not be considered that evidence or testimony because of this chronology.

### Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause; to an order to have the landlord comply with the *Act*, regulation or

tenancy agreement; to a rent reduction for repairs; services; or facilities agreed upon but not provided; to a monetary order for compensation for the loss of quiet enjoyment; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 32, 47, 55, 67, and 72 of the Act.

### Background and Evidence

The landlords provided a copy of a tenancy agreement signed by both parties on May 5, 2013 for a month to month tenancy beginning on July 1, 2013 for a monthly rent of \$1,250.00 due on the 1<sup>st</sup> of each month with a security deposit of \$625.00.

The tenancy agreement stipulates the following services and facilities as included in rent: water, electricity, heat, stove and oven, dishwasher, refrigerator, laminate flooring, window coverings (blinds), cablevision, storage, garbage collection, parking for 1 vehicles; other – smoke detector, 2 storage shelves in garage for tenants use. The agreement also includes an addendum with 4 items noted as follows: no pets allowed; rented to 1 tenant only; non-smoking in premises; and provide landlord with copy of content insurance.

The tenant submits that despite the landlords' knowledge that the tenant required a secured landline for his internet access in order to earn his income the landlords failed to provide the service from the start of the tenancy. The tenant submits that in order to get it working the landlord arranged for three separate visits from the service provider and it was finally acceptable on July 20, 2013.

The tenant submits that he lost income as a result of this delay in acceptable service in the amount of up to \$175.00 per day. The tenant seeks compensation in the amount of \$1,900.00 based on an average loss of \$100.00 per day for 19 days. The tenant provided no documentary evidence to confirm his employment; lack of availability for any relevant periods; or income from any sources.

The tenant also seeks compensation in the amount of \$300.00 based on a charge of \$100.00 per hour for having to wait 3 hours for the service provider technician to arrive and complete the work required to upgrade the internet service. The landlord submits that the tenant was advised the service provider would arrive within a 2 hour time block and that he did arrive within the first hour.

The tenant submits that the landlords failed to inform him when he viewed the rental property that the landlords have a portable air conditioner set up in their bedroom with the exhaust being expelled from the window directly over the window of the room that the tenant uses as his bedroom.

The tenant submits that the landlord was made aware of the tenant's desire to be able to sleep with his window wide open to get fresh air when the tenant was viewing the bedroom with his girlfriend. The tenant submits at that point the landlord should have informed him that they had the air conditioner and how they used it. The female

landlord does not recall such a conversation but does remember the tenants acknowledging how nice the fresh air was when they were looking at the yard.

The tenant requested the landlord move the unit so that the noise and exhaust would not go directly into the window well where the window is located. The landlord moved the unit to the master bathroom on the other side of that section of the house. The landlord has placed the unit on the deck surrounding their bathtub and has it exhausting out that window.

The tenant states that he is still bothered by the noise and the heat that is exhausted through because the window opening points the exhaust directly in the direction of his window. The landlords submit that the location of the exhaust makes it unlikely that any exhaust is entering into the bedroom the window.

Both parties provided substantial photographic and video evidence in support of their positions. The landlords have provided a specification sheet for the air conditioner indicating a dry air flow of 250 CFM and 52 decibel sound level at the front of the unit as well as documents that appear to be taken from internet sources regarding the issue of hot air rising and cold air falling.

The landlords submit that the house is of steel and concrete construction and find it unlikely that the tenant would be bothered by any vibrations caused by running the air conditioner. The landlords also submit that from the distance across the wall of the house is approximately 10 to 12 feet and that it would be another 6 to 8 feet down to the tenant's window. The landlords state that it is not likely that any hot air, exhaust, or noise would be reaching the tenant's window.

The tenant suggests that the landlord exhaust the air conditioner through the laundry room on the other side of the house. The landlords state that this is impossible as the laundry room is 35 feet away and they cannot extend the exhaust any longer than it is.

The tenant submits that as a result of this he has suffered a deprivation of sleep which has impacted his ability to enjoy the rental unit or his usual summer activities. He states that when his physician the exhaust "could be part of the cause of my swollen eyes." The tenant has provided no medical documentation.

The tenant's witness testified that she found the noise and exhaust to be bothersome and that it had impacted tenant's demeanor over the course of the summer. The tenant and witness confirmed that the witness stays with the tenant several nights per week. The witness or tenant did not indicate any impact on the witness's demeanor.

The witness also testified that she was present when the landlord asked the tenant if he had noticed any difference in the noise level and the tenant responded by indicating that they had not been able to sleep due to the noise. The witness confirmed the landlord stated that he was surprised because he had not had the air conditioner on for the previous nights.

The tenant seeks a rent reduction for the months of July and August 2013 in the amount of \$1,500.00 (\$750.00 per month) and compensation in the amount of \$1,200.00 (\$600.00) for the loss of quiet enjoyment of the rental unit. The total monthly compensation the tenant seeks is \$1,350.00 or \$100.00 per month more than the tenant paid in rent.

As a result of these issues in the tenancy the landlords seek to end the tenancy for cause. The landlords submit that the tenant is making unreasonable demands on the landlord that are putting his health and safety in jeopardy. The landlord has provided documentation on Type 2 Diabetes; Thyroid Disease; and benefits of sleeping in cool temperatures.

The landlords state that the ambient temperature in the bedroom has risen since they have moved the air conditioner into the master bathroom. In addition they submit that where it is placed in the bathroom is difficult for the landlord to reach in a practical and safe way.

The tenant submitted into evidence a copy of a 1 Month Notice to End Tenancy for cause issued by the landlord on July 31, 2013 with an effective vacancy date of August 31, 2013 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. In both cases the landlords have circled the words "the landlord".

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
  - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

While I accept the landlords have been frustrated by the tenant's requests I am not satisfied that the actions of the tenant are of such significance or seriousness to end the tenancy. When two or more parties live in close proximity there are bound to be disagreements on some issues and I find it is not unreasonable for the parties to attempt to work out the issues.

In cases, such as this, where the relationship includes a landlord/tenant component I find it is an obligation on the part of a landlord to listen to a tenant's concerns and attempt to resolve the problems where feasible and required. I therefore find that a

tenant asserting his complaints to a landlord is not grounds to end a tenancy. I find the landlord has provided no other matters of cause to end the tenancy. I therefore dismiss the landlords' Application.

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.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In relation to the tenants claim for compensation for the lack of adequate internet service I find that the provision of internet is not a service listed as provided as part of rent in the tenancy agreement.

Even if the provision of internet service was a part of the tenancy agreement I find that the landlord took immediate and reasonable steps to ensure the service met with the tenant's standards. I also find that the tenant has failed to provide any evidence to establish any loss of income that could be directly attributed to the adequacy of the internet service.

For these reasons, I dismiss the tenants claim related to any losses due to inadequate internet service.

As to the tenant's claim for compensation and a rent reduction for the loss of quiet enjoyment directly related to the issue of the air conditioner I find the landlord took reasonable steps after the tenant complained about the air conditioner being directly above his bedroom window.

I am persuaded by the landlords' submissions and video evidence that it is unlikely that any measureable amount of exhaust is entering into the tenant's bedroom after the landlord moved the air conditioner into the master bathroom. I am also satisfied that any noise created by the air conditioner would be sufficiently diminished to be minimal.

I find the tenant failed to provide sufficient evidence to establish that he has suffered any medical impact. Additionally, I find it to be inconsistent that only the tenant has been impacted but not his girlfriend, despite the fact she stays there a significant amount of time. And finally, confirmation of the discussion between the landlord and the tenant and his girlfriend after nights where the air conditioner was not run indicates a further incongruence in the tenant's complaints.

For these reasons I find the tenant has failed to establish that the landlord has violated the Act, regulation or tenancy agreement or that he has suffered any losses or damage as a result of any actions or negligence on the part of the landlords. I dismiss this portion of the tenant's Application.

### Conclusion

As both parties have been unsuccessful in their respective Applications, I dismiss their claims to recover the filing fees from each other.

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: August 28, 2013

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Residential Tenancy Branch