



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, MNDC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for; a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; to suspend or set conditions on the landlord's right to enter the rental unit; other issues; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the tenant withdrew his application to suspend or set conditions on the landlord's right to enter the rental unit as the tenant has since moved from the unit.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and is considered in this decision.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this tenancy started on April 01, 2012 for a fixed term which expired on March 31, 2013. The parties extended the tenancy until July 31, 2013 on

which date the tenant vacated the rental unit. Rent for this unit was \$950.00 per month and was due on the first day of each month.

The tenant testifies that:

The landlord has contravened the *Act* with regard to the tenant's right to quiet enjoyment of the rental unit. The landlord has engaged in a campaign of harassment, frequent and on-going interference in the form of persecution and intimidation, freedom from unreasonable disturbances and exclusive possession. The landlord has engaged in sending e-mails throughout the tenancy which contain abusive and vexatious comments and has verbally made comments of this nature to the tenant in person on many occasions.

Throughout the 16 months of the tenancy there have been 267 communications between the parties and of these 109 were sent by the tenant and 158 by the landlord. The tenant finds this level of communication between a landlord and tenant to be excessive and that the landlord instigated 82 percent of these e-mails which constitutes harassment or a form of bullying.

The contents of the landlord's e-mails created a psychological atmosphere of threat and intimidation in which the landlord used fowl language, name calling and hostility directed at the tenant. The tenant points out some comments in the e-mails in which the tenant states the landlord expresses hostility and then denies he is hostile. One example of an e-mail thread as written by the landlord on August 07, 2012 is "Don't expect anything from me except loathing and urging you at every opportunity to move out. You're a self centred, self absorbed, self serving mercenary of a person and I don't want you for a tenant or neighbour."

The verbal hostility continued from April, 2012 to July, 2013. The tenant states the landlord also subjected the tenant to a stream of complaints which upon scrutiny prove to be groundless. If the tenant attempted to defend himself against the complaints the tenant was met with further verbal attacks.

The complaints range from issues with the phone lines to the units belonging to the landlords and tenants, complaints about paying for some fish the tenant inadvertently removed that belonged to the landlord, complaints about repairs and maintenance, issues with a hydro bill, issues with the tenant's personal hygiene and housekeeping, issues with baseboard heaters, issues with the tenant playing music, issues with the tenants use of the compost bin and issues with yard work. The landlord showed disregard for the tenant's belongings when the landlord was going to let a workman use a piece of the tenant's bookshelves as a workbench.

All complaints of the landlord were unfounded or blatantly untrue and the tenant states the landlord had serious anger management issues. The tenant did not engage the landlord where ever possible and avoided making defensive arguments to avoid interacting with the landlord. The tenant states the landlord's accusations and complaints are made against the tenant and then the landlord threatens the tenant with mischief or retaliatory measure to constitute harassment against the tenant. The landlord has served the tenant with Notices to End Tenancy which have been dealt with at previous hearings.

The landlord entered the tenant's unit using a key without permission of the tenant on a number of occasions. The landlord also carried out excessive inspections of the tenant's unit without cause or proper notice although the tenant agrees he did allow the landlord to provide notice of entry by e-mail as the landlord worked out of the Province. The tenant refers to incidents in which the landlord has e-mailed the tenant and stated "If you are home or not is not an option with notice for maintenance and to be perfectly honest I could care less if it suits you." The tenant states this contravenes the regulations in which the landlord must give a time date and reason for entry which the landlord rarely did. On one occasion the landlord entered with Notice to fix the stove pipe but then proceeded to carry out an inspection of the unit. The tenant states he did not ask the landlord to leave for fear he would physically escalate the situation due to the landlords short temper. The landlord would conduct an inspection after each

disagreement with the tenant. The tenant states that the rights of a landlord to inspect a unit are not to be used as a form of punishment towards the tenant.

The tenant attempted to find affordable accommodation to leave this toxic environment but had to ask the landlord to extend the tenancy as suitable accommodation could not be found. The landlord wanted to exercise control over the tenant and made such comments as "The tail don't wag the dog," meaning that the tenant has to obey the landlord. It was evident that soon after entering into this tenancy the landlord regretted it and took action to try to drive the tenant out of the rental unit.

The landlord testifies that:

This is not a one-sided situation that was toxic from day one. The tenant would not even agree to go and pay his rent into the landlord's bank each month and the landlord could see that this was going to be a difficult tenancy. The tenant bragged to the landlord and the landlord's son on the day the tenancy agreement was signed that the tenant was able to bring disruption into other people's lives that he was a scholar and he could argue in four different disciplines. The landlord agrees there were discussions about the telephone lines and eventually another line was put in for the tenant. There was also an incident where the tenant mistakenly took the landlord's fish and the landlord just wanted the tenant to pay for them. The tenant also made a big issue over the landlord being the landlord or caretaker of the property when the landlord has been the caretaker for 25 years with the full approval of the owner and therefore the landlord never misrepresented himself. The tenant was in contact with the owner and was told to deal directly with the landlord.

The tenant misrepresents himself when he said he had trouble moving out. The tenant lifts weights every day and walks five to six miles a day so is more than capable of moving out. The tenant was required to do some yard work; however, while the landlord was out of Province working, the tenant did not do this work and the landlord's son was checking on the property and informed the landlord of this. Tools were provided by the landlord for the tenant's use. The tenant did not send the landlord an e-mail asking

where the tools were if he could not find them. The tenant was told that if he did not do the yard work then it would be grounds for eviction.

The tenant has raised issues with the composter. The tenant said it was broken; however, the landlord set it up in 10 minutes. The tenant has only shown sections of the e-mails and not all the e-mails between the parties have been included in the tenant's evidence. The kitchen sink faucet has always been a nuisance but when the landlords found out that that brand had a life time guarantee a new faucet was ordered. An incident occurred in which the contractor was accused of using the tenant's bookcase for a workbench. This bookcase was a rough sawn piece of wood which the tenant said was a bookcase. The contractor did not use it but the landlord did say at the time that if any of the tenants belongings get damaged the landlord would be responsible.

The Hydro bill was excessive. The tenancy agreement states electricity is included in rent and the tenant had agreed to pay \$50.00 a month towards Hydro and any excessive amounts above and beyond that the tenant would pay; however, this agreement was not put in writing.

The tenant is a hoarder and there are pathways through the house. Belongings had been packed against the baseboard heaters which could cause a fire so the tenant was asked to move them. The landlord agrees he disconnected a baseboard heater in a bedroom as it was a fire hazard with the tenant's belongings packed so tightly against it. The landlord had to argue and cajole the tenant into moving his belongings a foot away from the heaters. On other inspections the landlord found the tenant's hygiene in the unit to be questionable, the toilet bowl was dirty and the floors needed to be washed. The tenant also broke the freezer as he packed food into it so it would not circulate properly.

The tenant would play his radio in his office which is a room adjoined to the landlord's unit. He spent 80 to 90 percent of his time in this one room and had placed his speaker

against the adjoining wall which disturbed the landlord and complaints were made to the tenant about this.

The tenant states that inspections were carried out and entry was made without permission. The landlord disputes this. The tenant would allow the landlord to enter to make repairs and then if the landlord needed to get tools or parts he would leave the unit. When the landlord returned the tenant had locked the landlord out so the landlord would knock and then enter with his key again to complete the repair. Throughout the 16 months of the tenancy there were not excessive inspections. In total there were three inspections and this is not extreme particularly considering the state of the unit.

The landlord agrees that on one occasion while the landlord was working on the bathroom, the tenant was standing directly behind the landlord and the landlord kept banging into the tenant so the landlord asked the tenant to leave the landlord alone to get the work done. When the tenant refused, the landlord did ask the tenant to get his 'arse' out of the room. The landlord disputes that there has been a physiological campaign of abuse against the tenant. The landlord agrees that he does swear occasionally but this is not constant abuse.

The landlord asks why did the tenant ask the landlord to marry him on five different occasions if the tenant was so frightened of the landlord. The landlord testifies that he is not a gay man and on four of these occasions the tenant said it would all disappear if the landlord married him. The landlord at first thought the tenant was joking but after the fourth time the landlord started to feel harassed being 'hit on' by his tenant.

The landlord denies that he ever threatened the tenant with violence but agrees he did raise his voice to him and told the tenant he wanted nothing to do with him. At the last hearing the Arbitrator asked the tenant to provide evidence from January to July, 2013. However, the tenant has provided evidence back to April, 2012 as an attempt to misdirect the Arbitrator at this hearing.

The tenant came to the landlord and asked the landlord to extend the tenancy because the tenant had come into a large inheritance. The tenant wanted a six month extension. If the landlord was so hostile towards the tenant why would the tenant want to continue with such a hostile tenancy? The landlord agreed to extend the tenancy by four months as the tenant had said he was trying to purchase a house. The tenant also said if the landlord would extend the tenancy by six months the tenant would leave without any harassment. There was another hearing held in June, 2013 after the landlord had served the tenant with a Two Month Notice to End Tenancy. The tenant had the opportunity to leave then but did not leave. If this was such a bad environment why would the tenant stay? When the tenant did eventually leave he managed to find a new place very quickly at that time.

The tenant cross examines the landlord and asks if the landlord had said the tenant would leave, where in the evidence is this, as the tenant has submitted evidence to show that he was only asking questions. The landlord responds that there is no evidence as it was a verbal discussion. The landlord testifies that the tenant also acknowledged this with the previous Arbitrator that he had agreed to leave and look for another place as there is a surpluse of rentals on the island.

The tenant asks the landlord why if the tenants work bench caused damage to the wall or the unit was not cleaned did the landlord return the security deposit. The landlord responds and states that in spite of the damage to the house the security deposit was returned as the landlord wanted to be done with the tenant.

The tenant asks the landlord about the landlords claims that he only entered the premises in October and December to make repairs and that the tenant locked the door while the landlord was outside getting tools. The landlord responds that he said two or three times and every time the landlord walked out to get a tool the tenant locked the door behind the landlord. By the third time the landlord used his key as he was not going to keep knocking on the door.

The tenant asked the landlord that when he was in the tenant's unit, did the landlord move the tenant's plant stand away from the baseboard heaters. The landlord responds yes, to get at the heater. The tenant asks if the landlord moved his coffee table from the heater. The landlord responds that he does not recall. The tenant asks the landlord that the landlord had said there were boxes against the heaters, now the landlord is saying there was a plant stand and coffee table. The landlord responds that he cannot remember the specifics just that there was stuff against the heaters.

The tenant asks the landlord if the landlord said there was only room to walk two feet in space in the living room and hallway. If this is the case how could the tenant move his office chair, get to the bookcases or wardrobes. The landlord responds that there was a pathway to the office room and you had to move boxes to get to the walls. The bedroom was the same but not as congested and there was a pathway to the bed.

The tenant disputes ever asking the landlord to marry him either in jest or seriously.

The landlord cross examines the tenant and asks the tenant why did you want to extend the tenancy if it was so awful living there. The tenant responds that he asked the landlord to extend the time as the tenant anticipated finding new accommodation in that time. The tenant testifies that he only inherited a small amount of money and has had to rent a new unit that is smaller and more expensive.

The tenant has provided a series of emails dating from April, 2012 to July, 2013. The tenant has also provided a copy of the tenancy agreement and a summary of the incidents as requested by the Arbitrator at the last hearing.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to the Residential Tenancy Policy Guidelines # 6 which



states, in part, that the *Residential Tenancy Act* (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- Use of common areas for reasonable and lawful purposes, free from significant interference.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased.

Frequent and ongoing interference by the landlord may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of incidents described by the tenant and shown in e-mails from the landlord to the tenant which include entering the rental premises frequently, or without notice or permission and persecution and intimidation. If this is found then these might be considered to constitute a breach of the covenant of quiet enjoyment.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord engages in such conduct.

Considering the tenants claim of harassment; this is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant

of quiet enjoyment. There are a number of other definitions; however all reflect the element of ongoing or repeated activity by the harasser.

Having reviewed the documentary evidence from the tenant in the form of the e-mail communication between the parties I find that some of the comments made by the landlord to the tenant in these emails to be highly offensive, rude, insulting and of a vexatious nature. The landlord should have known that comments of this nature would be unwelcome and the tenant has maintained his replies to these e-mails in a courteous manner.

I also have concerns about the landlord entering the tenants unit. The tenant is entitled to receive written Notice from a landlord with the dates, times and reason for entry. The tenant agreed the landlord could serve these notices by e-mail due to the constraints of the landlords working in another Province. However, I am not satisfied that the e-mails received by the tenant clearly outline the time and reason for entry by the landlord or contractors and this does not therefore comply with the *Act*. If the landlord has included a reason for entry as a repair issue then the landlord is not entitled to carry out an inspection of the unit at the same time and a further notice must be issued.

I have reservations about the amount of compensation the tenant has claimed of \$5,017.62 as the tenant has not shown that the landlord's comments affected the tenant in such a way as to cause persecution and intimidation that would result in the tenant ending the tenancy as early as possible. The landlord had served the tenant with a Two Month Notice to End Tenancy in April, 2013 and the tenant filled an application to have that Notice set aside. A hearing was conducted on June 04, 2013. At that hearing the parties reached a mutual agreement in which the tenant agreed to vacate the unit on July 31, 2013 or earlier if the tenant could find alternative accommodation. Had the tenant been so traumatised by the landlord's comments and behaviour then I see no reason why the tenant would have asked to extend the tenancy and not moved out at the earliest opportunity even if that meant finding less than suitable accommodation.

The landlord was also instructed at the hearing held on June 04, 2013 not to engage in any conduct that interferes with or bothers the tenant. From the e-mail thread reviewed from June 06, 2013 I find the landlord has refrained from making further rude or insulting remarks to and about the tenant although clearly there is a level of animosity existing between the parties from the tone of the e-mails.

A landlord should maintain some level of civility towards a tenant. If the landlord has reason to end a tenancy then the landlord must pursue a course of action under the *Residential Tenancy Act* and refrain from making personal insults and verbal attacks against a tenant causing the tenant to lose his right to quiet enjoyment of his rental unit. Subsequently, it is my decision that the tenant is entitled to some compensation for a loss of quiet enjoyment of the rental unit however this claim will be limited for the reasons set out above to **\$1,000.00** pursuant to s. 67 of the *Act*.

The tenant is also entitled to recover the filing fee of **\$100.00** pursuant to s. 72(1) of the *Act*.

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,100.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: October 01, 2013

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Residential Tenancy Branch

