



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

MNDC, FF

### **Introduction**

This was an orally amended application by the tenant for a monetary Order for a rent reduction as a reflection of a loss of quiet enjoyment, and to recover the filing fee. The tenant abandoned the balance of their application.

I accept the tenant's testimony that despite the landlord having been personally served with the application for dispute resolution and notice of hearing in accordance with Section 89 of the Residential Tenancy Act (the Act) the landlord did not participate in the conference call hearing. The tenant was given full opportunity to be heard, to present evidence and to make submissions. The tenant testified they had sent the landlord all evidence forwarded to this hearing.

### **Issue(s) to be Decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenant provided document evidence including a copy of the tenancy agreement. The tenancy began May 25, 2013 with rent at \$ 800.00 per month and ended on September 15, 2013 when the tenant moved out. The tenant testified that the main complaints were the landlord's refusal to eliminate a wasp nest above the tenant's front door in light of the tenant's allergy to wasps, the landlord's refusal to rectify a non functioning fire alarm, restricted use of the back yard, no parking spot provided as contracted in the tenancy agreement, the landlord's repeated phone calls for the tenant to lower their talking volume, the landlord rummaging through the tenant's garbage bin while on the residential property, and the absence of a key for the rental unit's front door and the consequent unavailability of the front door to the tenant during the tenancy.

In addition, the tenant provided a letter to the landlord in respect to various issues important to the tenant.

The tenant testified the landlord would insist on watering the tenant's back yard portion during the full hours permitted by the local government watering restrictions. The tenant claims the landlord was unreasonable by not restricting the watering to only *a portion* of the allotted time – thus causing the tenant to surrender use of the back yard during the full duration of watering times.

The tenant testified the landlord would make phone calls to the tenant several times per week advising them they were being too loud while talking inside their unit. The tenant found this unreasonable as they saw no reason or structural cause preventing the rental unit from accommodating, what they described as, *normal* conversation, which the landlord found too loud. The tenant provided evidence the landlord attempted to manage noise from the rental unit from the tenant's, "grandchildren running or jumping or otherwise".

The tenant testified that they were not provided a parking spot on the residential property for the duration of the tenancy, as contracted between the parties in their tenancy agreement.

The tenant testified the landlord would routinely go through their garbage and recycling bins which the tenant saw as an affront to their privacy. The tenant testified that on one occasion the landlord took issue with the tenant's choice of what is recyclable.

The tenant testified that the landlord never provided them with a key to their front door: that they lost the key and that the tenant was only to use their back door for entry and egress.

### **Analysis**

I find that the tenant's undisputed testimony was matter of fact and unembellished. As a result, I accept their evidence they were, to some degree, disturbed by the landlord's conduct, or withholding of certain contractual obligations or conditions of the tenancy agreement.

I find it was unreasonable for the landlord to not attend to a wasp nest outside the tenant's rental unit, and a non-functioning fire alarm.

I accept the tenant's testimony they were unreasonably disturbed by the landlord's repeated calls for them to be quieter. However, I do not find it unreasonable for the landlord to alert the tenant that noise from "running or jumping" children should be managed in the parties' mutual interest.

I accept the tenant's testimony they were not provided a parking spot as contracted in the tenancy agreement.

I accept the tenant was unable to use their front door to the rental unit, without reasonable cause.

I find the tenant has not provided sufficient evidence to prove the landlord compromised the tenant's privacy in respect to inspecting their garbage and recycling. I find the scope of the tenant's claim does not address the landlord's obligations to the residential property or sufficiently shown how the landlord's conduct was unreasonable.

While I find that the landlord could have compromised in respect to watering the back yard, I find the tenant provided evidence the landlord attempted to follow local government rules respecting watering. I find the tenant has not provided sufficient evidence to prove the landlord unreasonably compromised the tenant's use of the back yard.

**Section 28** of the Residential Tenancy Act states:

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;

Policy Guideline #6 dealing with loss of quiet enjoyment, in part, states the following:

*This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."*  
*Every tenancy agreement contains an implied covenant of quiet enjoyment.*

In determining the amount by which the value of the tenancy has been reduced, I take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises as contracted or implied, and the length of time over which the situation has existed.

On reflection of all the relevant undisputed evidence, I grant the tenant compensation reflecting a reduction in the *value of the tenancy* in the set nominal amount of \$500.00, without leave to reapply. I find that the tenant is entitled to recovery of the filing fee in the amount of \$50.00 for a total entitlement of **\$550.00**.

### **Conclusion**

**I grant** the tenant a Monetary Order in the amount of **\$550.00**. This Order may be filed in the Small Claims Court and enforced as an order of that Court. This Order must be served on the landlords as soon as possible.

**This Decision is final and binding on both parties.**

*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 09, 2013

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Residential Tenancy Branch