



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Landlord by mailing, by registered mail to where the landlord resides.

### Preliminary Matters:

The landlord served a 2 month Notice to End Tenancy dated July 29, 2013 and setting the end of tenancy for October 1, 2013. That Notice has not checked off any of the boxes. The landlord requested that I give an Order for Possession based on the 2 month Notice to End Tenancy. The tenant did not apply to have that Notice cancelled. She submitted that it is invalid but that is not part of the application. I explained to the parties that an arbitrator can only consider the matters that have been put before him/her in the Application for Dispute Resolution. In this case the only claim made by the tenant is for a monetary order and for an order that the landlord comply with the Act. The Application does not seek an Order to cancel the 2 month Notice. As a result I determined that I cannot consider whether the Notice is valid and I do not have the authority to issue an Order for Possession if the Notice is invalid.

With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order for the reduced value of the tenancy and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on November 1, 2010. The agent of tenant testified the rent was \$660 per month. The landlord disputes this. She testified the rent was initially \$600 and was subsequently increased to \$650. The tenancy is month to month.

The agent for the tenant seeks a monetary order in the sum of \$650. The tenant is extremely ill and has been hospitalized for the last month waiting for a transplant. The agent testified that the tenant is entitled to compensation based on the following:

- The landlord lives upstairs and feels he can enter the tenant's suite at any time without any notice. He has entered the suite when they have not been home and has walked in without an invitation.
- The landlord has threatened to have people to come and physically throw the tenants out. The threats were made during the presence of the tenant's 10 years old daughter who was scared to the point of tears.
- The landlord repeatedly complains about the tenants friends accusing them of being thieves and drug dealers.
- The landlord has opened their mail.
- The landlord issued two non valid eviction notices.
- The landlord refuses to follow the rules.

The landlord and her witnesses deny the allegations and the evidence presented by the agent for the tenants. They testified as follows:

- They very much like the tenant, his wife and young daughter and they do not wish to throw them out. However, the father in law of the landlord is very ill and needs to be on the ground floor.
- They deny entering the tenant's rental unit. They testified that on one occasion they knocked on the door to the basement suite but they did not enter.
- The landlord and her husband deny entering when the tenant is not present.
- The landlord and her husband testified they have occasion talked to the tenant outside of the rental unit about the need to go inspect but they have only gone to the door once.
- On occasion the tenant has played loud music and they have come down and requested that he turn the music down. Both of the landlord and her husband leave for work very early in the morning.
- They deny threatening to have the tenant physically evicted. They admit that they have asked the tenant to find alternative accommodation as they need the rental unit for her husband's very ill father in law.

### Law

Policy Guideline #6 dealing with the breach of the covenant of quiet enjoyment includes the following:

"Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to **balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises**, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

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 either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it. A landlord would not be held responsible for interference by an outside agency that is beyond his or her control, except that a tenant might be entitled to treat a tenancy as ended where a landlord was aware of circumstances that would make the premises uninhabitable for that tenant and withheld that information in establishing the tenancy.”

### Analysis

The applicant has the burden of proof to establish his/her claim based on a balance of probabilities. The agent for the tenant failed to present evidence from the tenant, his wife and daughter. Her evidence is based on hearsay evidence allegedly stated to her by her brother. While hearsay evidence is admissible in a residential tenancy hearing, care must be exercised in considering the weight to attach to it. While the agent for the tenant made have reason as to why her brother did not attend the hearing or provide written evidence, she failed to provide a sufficient explanation as to why his wife did not attend or provide evidence. The landlord, her husband and daughter attended the hearing and gave first hand evidence disputing the allegations.

After carefully considering the disputed evidence presented at the hearing I determined the agent for the tenant failed to prove that the landlord entered the rental unit without permission. Further, she failed to prove that the landlord threatened to have the tenant physically evicted.

I do not accept the submission that a landlord going to the tenant's door to deliver a message or request in circumstances such as this amounts to the breach of the covenant of quiet enjoyment. Similarly, I do not accept the submission that the serving of an invalid notice is grounds for compensation. There is no evidence that the landlord was acting maliciously. The Residential Tenancy Act permits a landlord to end a month to month tenancy in certain situations. While the tenant may have the right to have those Notices cancelled because the landlord failed to use the proper form or failed to file the form in properly, this is not a sufficient basis for compensation.

In the absence of first hand evidence either in the form of oral testimony, an affidavit or and written statement and where the landlord present credible evidence disputing the allegations I determined the agent for the tenant failed to prove the tenant is entitled to compensation for breach of the covenant of quiet enjoyment. **As a result I ordered the tenant's application be dismissed without leave to re-apply.**

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: September 12, 2013

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Residential Tenancy Branch

