



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RR

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation or loss - Section 67;
2. An Order that the Landlord comply with the Act - Section 62; and
3. An Order allowing the Tenant to reduce rent for services/facilities agreed upon but not provided – Section 65.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to an order for the Landlord to comply with the Act?

Is the Tenant entitled to a rent reduction?

### Background and Evidence

The tenancy started on July 1, 2013. Since August 2013 the Tenant has been paying \$830.00 for rent.

The Tenant states that since the onset of the tenancy the Landlord has repeatedly attended the unit without notice insisting on entry, entered the unit without notice while the Tenant was away, used the Landlord’s key to enter without notice or invitation while

the Tenant was present, called repeatedly throughout any day and has left repeated voice messages of the Landlord swearing at the Tenant. The Tenant states that on two occasions the Landlord has yelled at the Tenant through the door from the outside and has raised a fist at the Tenant. The Tenant states that she has repeatedly asked the Landlord to provide notice and has given the Landlord relevant informational materials from the Residential Tenancy Branch. The Tenant states that this behavior, with the exception of the first incident, stopped after the application was served on the Landlord. The Tenant submits that she is a mental health consumer and as a result of the Landlord's behavior she has experienced significant stress and anxiety, has panic attacks, has increased her related medications and has started to see a mental health worker after being on a six week wait list. The Tenant claims that the Landlord has breached the Tenant's right to quiet enjoyment of the unit and claims \$1,590.00. The Tenant also claims an unknown amount of aggravated damages.

The Landlord's Agent, the daughter of the Landlord, denies that the Landlord has entered without permission, states that the Landlord only went in when the roommate moved out, and that the Landlord will either call and speak to the Tenant or will leave voice messages. The Agent states that she has never been present at the unit with the Landlord but has heard the Landlord make calls to the Tenant on occasion. The Agent states that the Landlord could not appear at the hearing as they were out of town.

The Tenant states that the shower head requires repair and that the bathtub tiles are moldy and damaged. The Tenant provided photos of the bathroom. The Agent objected to the photos as there are no dates indicating when the photos were taken. The Agent does not deny that the photos are of the bathroom. The Agent states that the Tenant has never told the Landlord of any problem with the tiles and that no request was made for its repair. The Tenant provided a copy of a letter dated September 3, 2013 and states that its delivery to the Landlord in person was witnessed. It is noted that this letter sets out repairs requested to the bathroom. The Agent states that the Landlord gave 48 hours written notice to attend the unit in August 2013 to make repairs to the shower but as the Tenant was not present the Landlord did not enter. The Agent

agrees that the bathroom will be repaired by December 18, 2013. The Tenant claims compensation in the equivalent of 30% of the rent for the lack of repairs and the presence of mold from the start of the tenancy to current. The Tenant claims a future and ongoing rent reduction of 50% should the Landlord not make the repairs as agreed and until those repairs are completed.

The Tenant states that the Landlord removed the Tenant's glass table top that was in the roommate's room and threw it away. The Tenant states that she was present at the time and informed the Landlord that the table belonged to her however the Landlord refused to listen to the Tenant. The Tenant claims reimbursement of the cost to replace the article and has obtained estimates from \$89.17 to \$106.00. The quantum of the Tenant's claim is \$1,696.00. The Agent agrees that the table top was thrown away but states that it belonged to the roommate.

### Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to reasonable privacy, freedom from unreasonable disturbance, and exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act. Section 29 of the Act restricts the landlord's right to access the rental unit for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

Given the Tenant's direct and convincing evidence, I find that the Landlord has entered the Tenant's unit without right on a repeated basis. I also accept the Tenant's evidence of additional disturbing behavior by the Landlord towards the Tenant and that the Landlord caused the Tenant a loss of the table top. I find that the Landlord by its own actions has failed to provide quiet enjoyment to the Tenant for the duration of the tenancy. I order the Landlord to comply with the above notice sections of the Act and no to enter the unit otherwise.

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law. Given the photos of the bathroom, I find that the Tenant has established that the tiles are in great need of repair. As the Tenant has indicated the presence of mold since at least September 3, 2013 and considering that the Landlord has not even made an inspection for mold, I find that the Tenant has established that the Landlord has failed to carry out its obligations to maintain the unit. Given the Landlord's agreement that the repairs to the bathroom will be completed by December 18, 2013, I find that the Tenant is entitled to those repairs by this date.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding

party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Aggravated damages are awarded where compensation is necessary to take into account distress and humiliation or other serious injury and not to penalize the offending party.

Having accepted the Tenant's evidence in relation to unauthorized entries by the Landlord and considering that such actions would be reasonably expected to cause serious distress, I find that the Tenant is entitled to compensation. The Tenant is also entitled to compensation for the Landlord's failure to make repairs and for the loss of the glass table top and I provide the Tenant with a global entitlement of **\$500.00**. I order the Tenant to reduce January 2014 rent by this amount. Should the Landlord fail to make repairs as agreed, I give the Tenant leave to reapply for additional compensation.

#### Conclusion

I order the Tenant to reduce January 2014 rent by \$500.00.

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: December 13, 2013

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Residential Tenancy Branch