



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, ERP, RP, LRE, LAT, RR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order suspending or setting conditions on the landlord's right to enter the rental unit; for an order permitting the tenant to change the locks to the rental unit; for an order permitting the tenant to reduce rent for repairs, services or facilities agreed to but not provided; and to recover the filing fee from the landlord for the cost of the application.

The parties both attended and gave affirmed testimony, and the tenant was assisted by an advocate, who did not testify. The tenant also provided evidentiary material prior to the commencement of the hearing to the Residential Tenancy Branch and to the landlord. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties agreed that the landlord will have an Order of Possession effective March 31, 2014 at 1:00 p.m., and I so order; the tenancy will end at that time. As a result, the tenant's applications for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order permitting the tenant to change the locks to the rental unit; for an order that the landlord comply with the *Act*, regulation

or tenancy agreement; and for an order suspending or setting conditions on the landlord's right to enter the rental unit are hereby dismissed.

### Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more particularly for damages for loss of quiet enjoyment?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

### Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$800.00 is payable in advance on the 1<sup>st</sup> day of each month. On January 23, 2014 the landlord collected a security deposit from the tenant in the amount of \$400.00 which is still held in trust by the landlord. A written tenancy agreement has been signed by the parties, but a copy has not been provided for this hearing. The rental unit is a suite in the lower level of a house and the landlord resides in the upper unit.

The landlord testified that despite numerous requests, the tenants did not pay rent for the month of March, 2014, and the tenant was served with a notice to end tenancy. Rent in the amount of \$800.00 remains outstanding.

The landlord further testified that no move-in condition inspection report was completed at the commencement of the tenancy, and agreed to repay the tenant by way of rent reduction a few hours for cleaning, but no amount was specifically discussed.

The tenant testified that the condition of the rental unit and the amount of time required to clean made it too expensive to hire a cleaning company, and mold removal was even more. The quotes received were between \$1,500.00 and \$2,500.00, although copies have not been provided for this hearing. The landlord saw the tenant cleaning the rental unit and agreed to take it off the rent, but agreed that the parties did not talk about the amount. The landlord issued a notice to end tenancy for unpaid rent on March 3, 2014 and no discount at all was considered on that notice. The tenant has also provided a DVD containing numerous photographs of the rental unit, which show a large build-up of mold on numerous windows, cupboards that have not been cleaned, missing handles

on faucets, beer cans strewn about the yard, dust, cobwebs and dirt on floors, walls, windows and appliances. The tenant testified that the photographs depict the state of the rental unit when the tenant and spouse moved in.

The tenant further testified that upon speaking to the landlord about a mold issue in the rental unit, the landlord told the tenant to live with it or “get the fuck out.” The tenant’s family also had to endure loud music by the landlord’s family and the landlord outside honking the horn.

The tenant also testified that the police had to be called every day between March 3 and 11 and the landlord was told that he could be charged with harassment. On March 13, 2014 the landlord sent other men to the rental unit to collect rent who were climbing on the balcony yelling, “We’re coming for the rent!” The police were called again who advised the tenants to remove themselves for their own safety, and the tenants haven’t stayed at the rental unit since; they’ve been staying in a shelter. Also, the landlord tried to kick in the door, and the landlord’s wife was screaming about not paying rent. The police were called again who told the tenant to record everything.

In rebuttal, the landlord testified that all he said to the tenant is that it must be nice to live free. Further, the police told the landlord that he had been “had” and to make the tenants comfortable so they don’t cause any damage. The friends of the landlord were on the landlord’s balcony, not the tenant’s.

### Analysis

Firstly, with respect to the tenant’s application for a monetary order for loss of quiet enjoyment, the landlord did not dispute the testimony of the tenant that friends of the landlord were yelling at the tenant, or that the tenants could not stay in the rental unit due to the continued harassment. The landlord also didn’t dispute the testimony that the police were called by the tenant on several occasions due to the landlord’s behaviour. I accept that the tenants had not paid the rent, and that was the landlord’s motive, however, a landlord is required under the *Act* to provide quiet enjoyment, including reasonable privacy and freedom from unreasonable disturbance. I find the landlord did not do that, and the landlord deliberately harassed the tenants in an effort to have them pay the rent or get out. I further find that the landlord had agreed to reduce rent for the state of the rental unit at the outset of the tenancy, but didn’t consider that at all when trying to collect rent or when the notice to end tenancy was issued. In the circumstances, I accept that the tenants have not been able to stay in the rental unit for the latter part of March, 2014 due to the landlord’s actions, and the tenant has established a monetary claim for half the rent.

The *Residential Tenancy Act* requires a landlord to provide and maintain a rental unit that is suitable for occupation by a tenant. A tenant's responsibility is to leave a rental unit reasonably clean and undamaged except for normal wear and tear at the end of a tenancy, not to correct the landlord's irresponsibility at the beginning of the tenancy. The landlord has not disputed the tenant's testimony about the condition of the rental unit at the commencement of the tenancy, and I find from the photographs provided by the tenant that the landlord provided a rental unit that had no attention prior to collecting a security deposit and rent from the tenant. In the circumstances, I find that the landlord has breached the *Act* by failing to provide a rental unit that was suitable for occupation. The tenant has not provided any evidence of the quotes received for cleaning the rental unit and getting rid of the mold, and I do not accept that somewhere between \$1,500.00 and \$2,500.00 has been established. I hereby order the landlord to repay the tenant a sum equal to one month's rent for that breach.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of the application.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective March 31, 2014 at 1:00 p.m. and the tenancy will end at that time.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,250.00.

The balance of the tenant's application is hereby dismissed without leave to reapply.

This order is final and binding and may be enforced.

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: April 1, 2014

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Residential Tenancy Branch

