



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, LAT

### 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)*, regulations or tenancy agreement; and for an Order to authorize the tenant to change the locks of the rental. During the hearing the tenant withdrew his application for an Order to authorize the tenant to change his locks as the tenant has now moved from the rental unit.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on January 27, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, by digital evidence; and in documentary form. There was no appearance for the landlord, despite being served Notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Preliminary Issues

A previous hearing has taken place on November 26, 2013 file number 537555. At that hearing the tenant was successful and the 10 Day Notice to End Tenancy for unpaid rent was set aside and the landlord was ordered to comply with the *Act* with regard to the landlord's unauthorized entry of the rental unit and with regards to the tenant's right to quiet enjoyment of the rental unit. The tenant was given liberty to reapply for compensation if any of these occurrences continued or the landlord failed to protect the tenant's right to quite enjoyment of his rental unit.

### Issue(s) to be Decided

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

### Background and Evidence

The tenant testified that this month to month tenancy started on November 03, 2011. Rent for this unit was \$650.00 per month due on the 3<sup>rd</sup> day of each month.

The tenant testified that the landlord has continued with her harassment of the tenant and has continued to breach the tenant's right to quiet enjoyment of the rental unit. The tenant testified that the landlord has disregarded the Orders made at the last hearing and has entered the tenant's unit on at least one other occasion. The tenant testified that he would set a thong and a broom up by the door when the tenant left the unit. The tenant testified that he would lock the door with a chain around the door handle and padlock. On one occasion, on or about April 08, 2014, the tenant returned home and found the door handle had been torn off and the thong and broom had been moved. The landlord has also changed the locks to the tenant's unit preventing the tenant gaining access.

The tenant testifies that the landlord and the landlord's husband have kept up the harassment of the tenant. The police have been repeatedly called to the unit by both the tenant and the landlord. The landlord has continued to harass the tenant with phone calls and on April 03 or April 04, 2014 the tenant was woken up by the landlord's husband screaming at the bottom of the tenant's stairs challenging the tenant to come down. The tenant then heard the landlord's husband yelling at the landlord to turn everything off in the tenant's unit. The tenant testified that as he had been working the graveyard shift he went to sleep and when he woke up later in the day he saw the landlord's husband prowling around the tenant's car with his cane and a bat raised up as if to strike the tenant's car. The tenant testified that he started to record the landlord's husband's actions through the window and saw the landlord's husband writing something on the window of the tenant's car which later the tenant saw was the word "Bastard". The tenant testifies that the landlord's husband also scratched the tenant's car with either his cane or the bat. The tenant testified that at this point he went outside where a further altercation took place and the police were called again.

The tenant testified that the landlord's husband informed the police that the tenant had attacked the landlord with the bat and threatened the landlord's life. The tenant has provided video of this incident. The tenant testified that he did not have the bat and the landlord and her husband were just trying to make the tenant look bad to the police officers. At this time the police got the landlords to turn the power back on to the tenant's unit; however, as soon as the police left the landlord turned it all off again. The tenant testified that as he has a demanding job he could not deal with the loss of the power and the landlord's altercations at that time and so the tenant testified that he used candles to light the unit and a propane burner to heat water. The tenant testified that the food in the tenant's fridge also started to spoil with the lack of power. The tenant testified that the landlord had also turned off the hot water to the tenant's unit as shown in the tenant's video.

The tenant testified that one night in April he returned home after work around 11.00 p.m. and saw a note from the landlord on his stairs. This note told the tenant to move

out and that the tenant's stuff was going to be stored. The tenant saw two men lurking in the dark with a cube van. The tenant challenged the men and asked what they were doing on his property. One of the men replied that it was not the tenant's property as he had not paid his rent. The tenant testified that he then knew that these men had been sent from the landlord. The tenant testified that to avoid an altercation with these men he backed off and called the police. When the police arrived they told the tenant to move out as the landlord might try something else. The police also told the tenant that the landlords had told the police that they were afraid of the tenant. The tenant testified that his evidence shows that it is the landlord and her husband that are the aggressors. The police had to get the landlord to let the tenant into the unit as the locks had been changed. When the tenant showed the police the previous decision from the Residential Tenancy Office the police saw then that the tenant had tried to pay his rent and the landlord had no right to change the locks or move the tenant out. The police did give the tenant 24 hours to leave the unit.

The tenant testified that he had to call into work and cancel his work for the next few days and started to move his belongings into temporary storage. The tenant testifies that he believes he was fully moved out of the unit around April 27 or April 28, 2014. The tenant testified that since the last hearing the landlord has continued to harass his mother with telephone calls and this has started to affect his relationship with his mother. The tenant testified that the entire period from September to April has been so stressful that the tenant has had to take time off work as he cannot drive for his job when he is so stressed or tired and the tenant's doctor has put the tenant on medication.

The tenant testified that the landlord was told at the last hearing that it was an invasion of the tenant's privacy to go and see the tenant's probation officer. The tenant testified that the landlord has continued to do this and on one occasion the landlord even returned the tenant's rent cheques by leaving the envelope that the tenant had posted them in at the tenant's probation officer's office.

The tenant testifies that he has been forced out of the rental unit by the constant harassment and loss of quiet enjoyment. The tenant testified that due to the landlord removing the tenant's lock the tenant no longer felt safe and secure in his home and feared for the safety of his belongings whenever he left his home.

The tenant seeks a Monetary Order to recover \$325.00 for the security deposit paid at the start of the tenancy. The tenant agrees he has not provided a forwarding address to the landlord for fear of further harassment.

The tenant seeks to recover \$1,250.00 for five days the tenant had to take off work due to the landlord's harassment, late night phone calls and for the time taken to move the tenant's belongings to storage. The tenant testifies that he earns \$250.00 per day.

The tenant seeks to recover \$60.00 for a full tank of gas used for the many trips taken to and from the storage unit as the tenant had to remove his belongings in his small car and so had to make many trips. Each trip is approximately a 50 kilometer round mile trip. The tenant seeks a further amount for gas of \$93.19 for the trips involved in moving his belongings from the storage locker to his new unit.

The tenant seeks to recover the costs incurred to send the landlord registered mail of \$14.39 plus \$0.57 for the envelope; also the cost of photocopies for the evidence of \$30.00.

The tenant seeks to recover the cost of the temporary storage of \$124.55. An invoice has been provided by the tenant in documentary evidence. The tenant also seeks to recover the cost for temporary lodgings until a new rental unit could be found. The tenant has provided invoices from a motel for \$66.67 for the first night and \$452.00 from April 09 to April 23 and from April 24 to April 30, 2014.

The tenant seeks compensation for the damage done to his car by the landlord's husband. The tenant testified that his deductible on his car insurance is \$1,000.00 but

as the tenant cannot get the damage repaired at this time he seeks compensation of \$500.00 as the tenant estimates the value of his car has been reduced by that amount.

The tenant seeks compensation of \$4,550.00 for the loss of quiet enjoyment suffered by the tenant. The tenant testified that his tenancy was devalued to such a point that the tenant had to move out. The tenant seeks this amount as an equivalent amount for rent from September, 2013 to April, 2014. The tenant testified that the landlord has blatantly ignored both the law and the Orders issued at the previous hearing in November, 2013, the landlord failed to provide the tenant with quiet enjoyment of the rental unit, privacy, utilities, and a secure home. The tenant testified that when he first filed his application he sought a lesser amount; however, as the harassment continued the tenant amended his claim to include the loss of quiet enjoyment.

The tenant asks that due consideration be given to his claim for all the aggravation and stress the tenant had to live with that continues to haunt the tenant.

The tenant has provided a large quantity of documentary evidence and four Compact discs containing digital evidence of photographs and video.

### Analysis

The landlord did not appear at the hearing to dispute the tenants claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's documentary evidence and sworn testimony before me.

A previous hearing was conducted by myself in November, 2013 at that hearing some of the complaints of harassment and loss of privacy were dealt with and the landlord was Ordered to comply with the *Act* with regard to ensuring that proper Notice was given to the tenant before the landlord entered the tenant's rental unit pursuant to s. 29 of the *Act*. From the undisputed evidence and testimony before me I am satisfied that

the landlord has entered the tenant's rental unit on at least one occasion since the landlord was ordered to provide proper Notice. I also find the landlord broke off the tenant's chain and lock door knob which prevented the tenant securing his unit. I further find the landlord changed the locks to the tenant's unit in direct non compliance with s. 31(1) and 31(1.1)(a)(b) of the *Act* which states:

**31** (1) *A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.*

(1.1) *A landlord must not change locks or other means of access to a rental unit unless*

*(a) the tenant agrees to the change, and*

*(b) the landlord provides the tenant with new keys or other means of access to the rental unit.*

The landlord was also ordered at the previous hearing to protect the tenant's right to quiet enjoyment of the rental unit pursuant to s. 28 of the *Act*. The tenant was given leave to apply for a Monetary Order for compensation if the landlord's behaviour toward the tenant continued. The *Act* establishes 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.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however, a written provision setting out the terms in the tenancy agreement pertaining to the provision of

quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had 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. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: Entering the rental premises frequently, or without notice or permission; unreasonable and ongoing noise; persecution and intimidation; refusing the tenant access to parts of the rental premises; preventing the tenant from having guests without cause; Intentionally removing or restricting services, or failing to pay bills so that services are cut off; forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Harassment 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 all the digital evidence provided by the tenant there are videos which show a high level of animosity between the parties particularly in the case of one video which depicts an aggressive incident between the tenant and the landlord's husband



while the landlord stands by. The exchange of profanities between the parties was of a level that incited both parties to antagonize the other; however the landlord's husband has clearly made threats of violence towards the tenant during that exchange. This video also shows the landlord's husband walking around the tenant's car with what appears to be a cane and bat. I find on a balance of probabilities that the landlord's husband has caused some damage to the tenant's car. It is also evident that the landlord's husband wrote the word "Bastard" in the dust on the back of the tenant's car window. These actions further ignited the animosity between the parties and the landlord should have prevented this conflict between her husband and the tenant.

I am satisfied from the undisputed evidence before me that the landlord did cut off the services to the tenant's unit which included his power and hot water. The landlord was told to put the power back on by the police but turned it off again when the police left. I would consider this to be an intentional removal of the tenant services which left the tenant without power or hot water to his unit.

I am satisfied from the undisputed evidence before me that the landlord has continued to invade the tenant's privacy by going to the tenant's probation officer on at least one occasion since the landlord was told to stop this action at the last hearing.

Overall from the evidence presented I am satisfied that the landlord has breached the covenant of quiet enjoyment of the rental unit through their own actions and by standing by while the landlord's husband harassed and threatened the tenant. I find the landlord has engaging in a course of vexatious comment or conduct that was known or ought reasonably to have been known to be unwelcome". These actions over the period from September to April caused the tenant to vacate the rental unit. Consequently, I uphold the tenant's application for compensation. However, the tenant has applied for compensation of \$4,550.00 for a loss of quiet enjoyment. It is my decision that the tenant incited some of the animosity between the landlord and the landlord's husband by engaging them in an exchange of profanities which potentially made the situation more explosive than it would have been if the tenant had not confronted them. Due to

this I find the tenant's claim for compensation to be extreme. As a result I have limited the tenant's claim to **\$3,000.00** for a loss of quiet enjoyment of his rental unit.

As the tenant has shown in his evidence that he was forced to vacate the unit under the direction of the police officers attending and because of the actions of the landlord which made it difficult for a successful tenancy to be in place; I find the tenant is entitled to recover costs to move from the unit and to store his belongings until another rental unit could be found. I therefore uphold the tenant's claim as follows:

Lost time at work for five days at \$250.00 a day to the total sum of **\$1,250.00**;

Cost of gas to remove belongings from the rental unit to storage and from storage to new accommodation at **\$153.19**;

Cost for temporary storage at **\$124.55**;

Cost of temporary lodging at **\$518.67**.

I further find on a balance of probabilities that the landlord's husband did cause damage to the tenant's car; however, although the tenant has shown that his deductible for his car insurance is \$1,000.00 the tenant has not yet had any damage repaired and I am not satisfied that on a car of this year that there may not have been some dents and scratches already in place for which the landlord's husband was not responsible. However, I do accept that due to the likely damage caused by the landlord's husband that this would devalue the tenant's car should the tenant decide to sell it. I therefore limit the tenant's claim for damage to his car to **\$250.00**.

With regard to the tenant's claim for costs of registered mail, an envelope and photocopying costs; there is no provision under the *Act* for costs of this nature to be awarded to an applicant. Consequently, these sections of the tenant's claim are dismissed.

With regard to the tenant's claim at the hearing to recover the security deposit; a tenant is required under s. 38 of the *Act* to provide a forwarding address in writing to the

landlord. The landlord has 15 days from that date to either return the security deposit or file an application to keep it. The tenant agrees that he has not provided a forwarding address in writing to the landlord and therefore I find the tenant's application to recover the security deposit is premature.

### 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 **\$5,296.41**. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced 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: May 16, 2014

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Residential Tenancy Branch

