



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, RP

### Introduction

This hearing dealt with an application by the tenant 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; and for an order that the landlord make repairs to the unit, site, or property.

Both the landlord and tenant attended the in-person hearing and gave affirmed evidence. Three witnesses attended and also gave affirmed evidence.

### Preliminary Issue

Landlord's request for an adjournment – The landlord requests an adjournment until on or after May 30, 2014 so that the co-owner of the rental unit can attend the hearing. The co-owner has been in Ontario and will be returning to BC at the end of May. Asked whether the co-owner has relevant evidence, the landlord who attended the hearing said the co-owner may have evidence regarding an incident involving a broken window. The tenant gave evidence that the broken-window incident is not relevant to his claim. The tenant opposes an adjournment since it would create a delay.

I decided to reserve judgment on the request for an adjournment until after the parties and witnesses who attended the hearing gave evidence. On hearing the evidence of the parties and witnesses, I decline to grant an adjournment. Given my decision on the tenant's application (below) the landlord's position is not prejudiced by the absence of the co-owner.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?

Is the tenant entitled to an order that the landlord comply with the Act, Regulation, or tenancy agreement?

Is the tenant entitled to an order that the landlord make repairs to the unit, site, or property?

### Background and Evidence

The tenancy agreement which was signed by the parties on September 27, 2013 indicates the tenancy started on November 1, 2013 and the tenant is obligated to pay \$1,200.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of \$600.00.

The tenant was served on April 25, 2014 with a notice to end tenancy for cause. At the date of the hearing, the tenant had not yet decided whether to apply for dispute resolution to cancel the notice.

The tenant's evidence is that he intends to move out of the rental unit, although he had not yet given notice at the date of the hearing. The tenant claims the landlord's actions have breached his right to quiet enjoyment and forced him to move. He seeks a monetary order against the landlord for his moving costs which he estimates to be \$2,300.00. The tenant has a disability affecting his mobility and this requires certain equipment to be installed in his home. The tenant also seeks compensation for loss of quiet enjoyment in the amount of one month's rent \$1,200.00, for a total claim of \$3,500.00.

The tenant raised the following issues in support of his application:

1. Insufficient heat
  2. Tenant's dog
  3. Smoking
  4. Harassment by landlord
    - a. Landlord looking in tenant's windows
    - b. Tenant's teen daughter
    - c. Incident between landlord and tenant outside on the grass
    - d. Landlord's discussion with tenant's teen daughter re noise
    - e. Tenant's caregiver feels harassed
    - f. Incident involving the landlord weight-lifting
    - g. Noise from upstairs neighbour
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1. Insufficient heat – The tenant gave evidence that he moved into the rental unit and it was very cold at night in November and December. He says his caregiver

went on holiday in January 2014 and the daughter of the upstairs tenant worked as his temporary caregiver. There was a dispute regarding the temporary caregiver's pay, and the tenant asserts that the upstairs tenants started turning off the heat at night in retaliation. The tenant's evidence is that he complained to the landlord many times and also called the police more than ten times. The tenant also gave evidence that he went to the hospital several times in January and February, and he relates this to the cold.

The tenant states he has asked the landlord for separate control of the heat in the downstairs unit but the landlord told him that was impossible.

The landlord agrees that the temperature in the rental unit is controlled from the rental unit above. However, he disputes that it is cold in the rental unit. The landlord lives on the other side of the duplex from the rental unit and states that there is the same furnace and heating system in both sides of the duplex. The landlord's evidence is that the heating bills from the tenant's side of the duplex are about \$20 or \$30 more each month than the landlord's side, and that would not be possible if the heat were turned off for half of each day on the tenant's side.

The landlord also states that he has been in the tenant's rental unit and did not find it cold. The tenant told him that it was cold late at night, and the landlord invited the tenant to call him if it was cold late at night and the landlord would come over. He says the tenant did not contact him any night regarding cold. The landlord's evidence is that the previous tenants of the rental unit did not find it cold, and the tenant in this application knew the heat was controlled from the upstairs unit when he moved in.

The landlord said he spoke to the tenants who live upstairs from the tenant in this application, and they deny turning the heat off at night. The landlord states the tenant did not complain about the heat until March 2014 when the dispute between the tenant and his upstairs neighbours became worse. He says the tenant did not contact him in January or February regarding heat and those are colder months. The landlord also gave evidence that the tenant has an electric heater but does not use it when his caregiver is not there.

The landlord also gave evidence that the tenant's previous landlord told the landlord that the tenant went to the hospital frequently.

2. Tenant's dog – The tenant gave evidence that his caregiver brings the tenant's dog with her when she comes over, however the tenant is not allowed to have the dog in the rental unit. The tenant's caregiver used to park on the property but now parks on the street because the landlord makes her nervous. The tenant states the dog was not an issue previously.

The landlord gave evidence that the tenant signed a lease which says no dogs and no smoking. Soon after the tenant moved in, the landlord says he saw the dog going into the suite. The landlord said he took photos of the tenant sneaking the dog in at the end of April; he states the upstairs tenants have told him that the tenant lets the dog in when the landlord is not there. The upstairs tenants are afraid of the dog, and the landlord has told the tenant that the dog may not be on the property anymore.

3. Smoking – The tenant gave evidence that the landlord has recently complained that the tenant is not smoking in the designated area, however this was not an issue before the tenant applied for dispute resolution. The tenant's evidence is that the smoking area is not covered and so he smokes in a covered area.

The landlord gave evidence that he told the tenant he could smoke in a gazebo the tenant put up, but the tenant continues to smoke under the deck where the smoke enters the building.

4. Harassment by landlord – Asked to explain how the landlord harassed him, the tenant described the following issues:

- a. Landlord looking in tenant's windows – The tenant gave evidence that the landlord has been spying on him since the problem with the heat started at the end of January. He states he has had to start closing the blinds and the situation made his teenage daughter uncomfortable.

The landlord's evidence is that he lives on the other side of the duplex and therefore is often around the building and walks by the tenant's window when he cuts the grass. He denies that he spies on the tenant.

- b. Tenant's teen daughter – The tenant gave evidence that the landlord told him that the tenant's daughter was a pretty girl, and the landlord also mentioned this to several other people.

The landlord made no comment regarding this complaint. The landlord said he did not mind the tenant's daughter.

- c. Incident between landlord and tenant outside on the grass – The tenant gave evidence that one day in April 2014 the landlord came up very close to the tenant, who uses a motorized wheelchair, and the landlord put his hands out toward the tenant. The tenant's evidence is that he was forced to back up on to the grass and the wheelchair became stuck.

The landlord said that the police attended after this incident. The police told the landlord that the tenant had admitted that the tenant hit the landlord.

- d. Landlord's discussion with tenant's teen daughter regarding noise – The tenant gave evidence that his daughter and her friends were laughing one night in the rental unit. The tenant's evidence is that the landlord told the tenant's daughter that if she wanted to drink, she should go somewhere else. The tenant said his daughter did not feel safe and moved out in early January. Asked why his daughter did not feel safe, the tenant did not elaborate.

The landlord's evidence is that there was a noise complaint from the tenants above the tenant in this application about the tenant's daughter and her friends being noisy at 2 or 3 a.m. His evidence is that he told the tenant's daughter that she should go out if she was going to be up late or go to another room in the rental unit that is not below the upstairs tenant's bedroom. His evidence is that the tenant's daughter told him she was moving because she could not have her dog at the tenant's rental unit.

- e. Tenant's caregiver feels harassed – The tenant's caregiver EA gave affirmed evidence. She said that on one occasion, she had the tenant's dog on a leash and the landlord started taking pictures of her with the dog. She also gave evidence that the landlord sends letters to both her and the tenant, and she does not like to get in the middle. For example, her evidence is that the landlord handed her an eviction notice for the tenant. She said she thinks the landlord should mail documents to the tenant. The tenant's caregiver agreed that she removes the tenant's mail from the mailbox for him, because of the tenant's mobility problems.

The landlord said he took pictures of the caregiver with the dog as evidence that the tenant and caregiver allowed the dog on the property.

- f. Incident involving the landlord weight-lifting – The tenant gave evidence that the landlord looked at him in a menacing way when they were both outside and the landlord was weight-lifting.

The landlord agrees he was working out with weights on his side of the yard one day while the tenant was outside smoking. The landlord said that they did not speak and he denies that he looked at the tenant aggressively.

- g. Noise from upstairs neighbour – The tenant gave evidence that his upstairs neighbour used to make a banging noise above the tenant's bedroom. The tenant gave evidence that he complained to the landlord many times.

The landlord's evidence is that the tenant has never lived in a basement suite before, and the upstairs neighbours do not make too much noise.

The landlord denies that he has harassed the tenant. The landlord's evidence is that the tenant is upset about a lot of things and likes to fight. He says the tenant has been aggressive, angry, and used foul language. He states the tenant has sat in his wheelchair on the street in front of the building and stared into the landlord's living room window. He said the tenant also repeatedly honked the horn on the tenant's wheelchair one day while the landlord was driving by.

One of the upstairs tenants, LF, gave evidence on behalf of the landlord. Her evidence is that they did not turn off the heat at night, since if they did that they would be cold too. She said she worked for the tenant for the month of January 2014 but he refused to pay her. The witness also confirmed that she has seen the tenant's dog come into the house, and that she has heard the tenant using obscenities and racist language.

The landlord's wife, DR, also gave evidence on behalf of the landlord. Her evidence is that after the landlord gave the tenant a letter, the tenant parked his wheelchair in front of the building and stared in their window and also honked his wheelchair horn at the landlord. She said that when the landlord went to the rental unit to give the tenant a letter, the tenant would not answer the door; the tenant responded with obscenities and called the police. She said the police have told them the tenant is looking for a fight and have advised the landlord and his wife to stay away from the tenant.

The landlord's evidence is that the upstairs tenant is thinking of moving out because of conflict with the tenant in this application.

### Analysis

A tenant's right to quiet enjoyment is set out in Section 28 of the Act and clarified in Residential Tenancy Policy Guideline 6 – Right to Quiet Enjoyment ("RTB Guideline 6"). RTB Guideline 6 states at page 6-2 that for a tenant to prove that a landlord's actions breached his or her right to quiet enjoyment, "it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour." I find the evidence has not established that the landlord engaged in a course of repeated or persistent threatening or intimidating behaviour. For that reason, I find there has been no breach of the tenant's right to quiet enjoyment.

Based on a review of the written statements from the parties and the evidence presented at the hearing, I find the tenant has not proven that the landlord engaged in threatening or intimidating behaviour. The incidents described do not appear to constitute ill-treatment of the tenant.

Since the tenant has not proven a breach of his right to quiet enjoyment, the landlord is not liable for the tenant's moving costs or other compensation for such a breach. I therefore dismiss the tenant's application for a monetary order.

The tenant has not demonstrated that the landlord is not complying with the Act, and so I dismiss his application for an order that the landlord comply with the Act. Similarly, the tenant has not demonstrated that repairs to the rental unit are required, and I dismiss his application for an order for repairs.

### Conclusion

The tenant's application is dismissed.

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 20, 2014

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Residential Tenancy Branch



