



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SHEENAJAY HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC, RR, OLC, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant seeking a Monetary Order in compensation for damage or loss under the Act, or tenancy agreement; an Order compelling the Landlord comply with the Act or agreement; and an order for repairs to the unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Preliminary Matters**

The landlord testified that the tenant suddenly vacated the unit the first week of June 2014. The tenant confirmed that she left because she could no longer tolerate living in the unit. The tenant testified that she believed she was in danger of physical harm.

As the tenancy has now ended, I find the portion of the tenant's application seeking an order to force the landlord to comply with the Act and an order to force the landlord to make repairs to the unit are moot and no longer need to be determined.

The hearing will still proceed with respect to the tenant's monetary claim for compensation for devalued tenancy due to loss of quiet enjoyment.

### **Issue(s) to be Decided**

- Is the tenant entitled to monetary compensation?

### **Background and Evidence**

The tenancy began in 2006 and the most current rent was \$650.00. A security deposit of \$312.50 is being held by the landlord.

The tenant testified that she had enjoyed being a long-term tenant in the complex for several years, but had recently been subjected to harassment from another resident. The tenant testified that she told the landlord about the hostile conduct inflicted upon her by this other resident who lived in the unit above, and asked the landlord to intervene.

The tenant testified that, despite repeated complaints to the landlord, the ongoing harassment from the other resident continued and included stomping from above, yelling, name calling and stalking by the other resident.

Submitted into evidence were copies of letters from the tenant to the landlord describing the alleged conduct of this individual and requesting that the landlord to take steps to protect the tenant.

The tenant testified that on several occasions when she felt unsafe in her home, she found it necessary to stay temporarily with friends and relatives. The tenant testified that, after nothing was done by the landlord or the police, she was forced to move out for her own protection.

The landlord confirmed receipt of the tenant's evidence that was submitted to Residential Tenancy Branch. The landlord acknowledged that they received the tenant's written complaints during the tenancy and dutifully followed up on the matter by investigating the allegations and speaking to the resident accused of harassing the tenant. The landlord testified that the resident denied the tenant's allegations.

The landlord testified that they offered to come to the tenant's unit during any incident if the tenant would let the landlord know at the time, so the landlord could personally witness the alleged hostile behaviour. The landlord pointed out that the tenant never contacted the landlord at any time, so that the landlord was not able to ever observe the alleged harassment against the tenant. The landlord also pointed out that there was never any formal intervention by police, which would have occurred, had the tenant been in danger as she claimed.

The landlord's position is that they did everything possible that would be expected of a landlord under the Act, but found they were unable to confirm any of the tenant's allegations.

The landlord's position is that the tenant had unrealistic expectations that the landlord could immediately remove another renter based solely on the tenant's complaints. The landlord testified that they were certainly prepared to terminate the other resident's tenancy if the purported harassing conduct was ever confirmed. The landlord pointed out that, had they found evidence to support the tenant's accusations against the resident, they would not hesitate to serve a Notice to End Tenancy for Cause.

The landlord stated that, despite not finding any truth to the tenant's continuous accusations, they were still monitoring the situation. The landlord feels that they should not be held liable for the tenant's actions in choosing to move out.

The tenant testified that her tenancy was devalued because she was deprived of quiet enjoyment for several months and the tenant is requesting monetary compensation from the landlord in the amount of \$1,250.00.

With respect to the amount of the tenant's claim, the tenant stated that, although she did not suffer an actual monetary loss, she endured significant disturbances that devalued her tenancy and forced her to incur the expenses of relocating.

### **Analysis**

With respect to the tenant's monetary claim, I find that section 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for any damage or loss that results. Section 67 of the Act grants a Dispute Resolution Officer authority to determine the amount and order payment under the circumstances.

It is important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

#### **Test For Damage and Loss Claims**

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent *in violation of the Act, agreement or an order*
3. Verification of the amount to compensate for the loss or to rectify the damage.
4. Proof that the claimant took reasonable steps to minimize the loss or damage

In this instance, the burden of proof is on the tenant; to prove the damage/loss stemming directly from a contravention of the Act or agreement by this landlord.

Section 28 of the Act protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that, under the Act and the agreement, a landlord must protect the tenant's right to quiet enjoyment if another resident is found to be unreasonably disturbing the tenant.

In this instance, I find that the landlord did investigate the tenant's complaints in a timely manner and did take reasonable steps to address the allegations, within the landlord's ability to do so under the Act. I find that the landlord could not have employed further measures than those already taken. I find that there is not sufficient evidence to verify that the landlord had neglected their duty under the Act and agreement.

For the reasons above, I find that the tenant's monetary claim does not adequately satisfy element 2 of the test for damages and loss. I find that the tenant's claim against the landlord for compensation must be dismissed.

Accordingly, I hereby dismiss the tenant's application in its entirety without leave to reapply.

### **Conclusion**

The tenant is not successful in this application and it is dismissed without leave.

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: July 14, 2014

