



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNL, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for more time to dispute a notice to end tenancy; for an order cancelling a notice to end tenancy for landlord's use of property; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant attended with an advocate and called one witness. The landlord also attended with an agent assisting. The tenant also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the landlord. The parties and the witness each gave affirmed testimony, and the parties were given the opportunity to cross examine each other and the witness 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 advised that the tenant is no longer resident in the rental unit, and therefore the tenant withdraws the applications for more time to dispute the notice to end tenancy and for an order cancelling the notice to end tenancy.

### Issue(s) to be Decided

The only issue remaining to be decided is:

- 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 specifically for aggravated damages for loss of quiet enjoyment of the rental unit?

### Background and Evidence

The tenant testified that this tenancy began 5 years ago and ended June 30, 2014. Rent in the amount of \$650.00 per month was payable under the tenancy agreement, and was paid by putting it on the door every month for 5 years.

The tenant further testified that on March 1, 2014 the landlord picked up the rent and then returned to the rental unit to talk about tenant's insurance which took about a half hour. When the landlord talks to the tenant, he continually steps closer, too close and right up to the tenant's nose.

On March 8, 2014 the tenant was in the corner of the bakery section in a grocery store and the landlord saw the tenant and said he had something urgent to talk to the tenant about, but he held her there for about 15 minutes talking about insurance again. The tenant testified that she feels uneasy all the time.

Following that, the landlord was at the tenant's door telling the tenant that he wanted the tenant to pay an extra \$30.00 per month and he would get the insurance for the tenant. The tenant asked the landlord for the insurance company business card. She asked the landlord why he wanted to pay the tenant's insurance, and he replied that he was concerned that she would pay for it for 3 months and then stop, so he wanted to pay it. The tenant took the business card and checked out the insurance, discovering that it would only cost \$20.00 per month at the seniors' rate.

On March 18, 2014 the tenant was ill, and the landlord knew that, but the landlord continually banged on the tenant's door.

On March 25, 2014 the tenant found a note on the door about insurance and about whom to make rent cheques payable to. The same day, while the tenant was not at home, the landlord entered the tenant's rental unit. The tenant's son was there who advised the tenant that the landlord opened the door, called the tenant's name, and then left.

Also, the landlord arrived with a contractor twice to test the alarms, and was at the rental unit 4 times in 6 days during the month of March. The tenant tried to avoid conversations but couldn't because the landlord was there all the time. Prior to March, 2014, the landlord also disturbed the tenant by calling her name while on the balcony or through windows or at the door.

The tenant claims \$650.00, being the equivalent of one month's rent for the landlord's constant pressure and disruption during the month of March, 2014.

The tenant's witness testified by reading a statement prepared for this hearing regarding excessive disturbances. On at least 2 occasions, the witness saw interactions between the parties, wherein the landlord was loud, aggressive, intimidating, and derogatory. She witnessed the landlord yelling up the tenant's balcony and in the grocery store. The witness also was present when the landlord held the tenant up for a long time to explain to the tenant about how a toilet works. He was loud and the tenant felt threatened. The witness was also present on one occasion wherein the landlord knocked on the tenant's door and attempted to push the door open. The witness testified that he doesn't let her go.

The landlord testified that the tenant has resided in the rental unit for 5 years, and the landlord owns 2 other rental units. The rental units are in a condominium type of complex and the landlord is also on the strata council. As such, the landlord is at the complex often.

In March, 2014 a fire broke out in a unit not belonging to the landlord, however the strata council advised all owners to ensure they are properly insured and their tenants were also. The landlord wanted the tenants to get insurance and encouraged them to do so, and the tenant decided to get her own insurance.

The landlord further testified that the tenant's phone number was not in service, so in order to speak with the tenant the landlord would slide a note under the door of the rental unit or knock on the door. As a strata council member, the landlord attended the rental unit with a contractor to test the fire alarms.

The landlord totally denies the incident described by the tenant in the grocery store and testified that it never happened. The landlord does not recall any encounter or insurance discussion with the tenant at that time. The landlord had tried to explain to the tenant on one occasion in her rental unit how it impacts a landlord if a tenant does not have insurance.

The landlord also testified that he happened to knock on the tenant's door and asked about the toilet in the rental unit, and explained how it works. The landlord offered to take it out and clean it if the tenant was going to be away for a few days, but that never happened. On March 25, 2014 the landlord tried to contact the tenant about her insurance. The landlord knocked, opened the door, called the tenant's name and then left. On the balcony, the landlord testified that he simply said hello to the tenant, but did not yell. The tenant has never told the landlord that he was too close or to back up.

## Analysis

The tenant claims damages in the equivalent of one months' rent for loss of quiet enjoyment of the rental unit due to constant or repeated contact initiated by the landlord that the tenant found to be unwelcome harassment. In order to be successful in such a claim, the onus is on the tenant to satisfy the 4-part test:

1. That the incidents occurred;
2. That the incidents were contrary to the *Act* or the tenancy agreement;
3. The amount of such damages; and
4. What efforts the tenant made to mitigate, or reduce the damage suffered.

With respect to element 1, the landlord has admitted in his testimony to knocking on the tenant's door, opening the door and calling the tenant's name. The landlord denies any encounter with the tenant at the grocery store, but the tenant and the tenant's witness both testified to that. They also both testified that the landlord yelled up at the balcony, and that he was loud, aggressive and intimidating. Neither party disputes the incident wherein the landlord explained the operation of a toilet. The landlord did not dispute the tenant's testimony that the landlord attended the rental unit 4 times in 6 days during the month of March, 2014. The tenant specifically described contact on March 1, 8, another day in March, March 18 and 25. The only encounter the landlord denied was the March 8 incident that the tenant described in the grocery store. I am satisfied that the incidents, or at least some of them, occurred.

With respect to element 2 in the test, the *Residential Tenancy Act* states 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 as described in Section 29 of the *Act*, which states:

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement 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.
- (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The *Act* is very explicit about the landlord entering the rental unit. There is no question that the landlord knocked on the tenant's door, received no answer so opened the door and called the tenant's name. I find that to be contrary to the *Act*; the landlord has no right to open the door unless one of the factors set out above are met, which I find they were not. If a person does not wish to open the door of their home when someone knocks, no one, especially a landlord has the right to open the door. Therefore, I find that the tenant has established that the damages claimed are a result of the landlord's failure to comply with the *Act*. I also find that the landlord has failed to provide the tenant with reasonable privacy and freedom from unreasonable disturbance, and the tenant has established element 2 in the test for damages.

With respect to element 3, the parties agree that the tenancy lasted about 5 years, and there were no issues for the first 4 years. The incidents described by the tenant all took place within the month of March, 2014. I find that the tenant had possession of the rental unit, and although I have found that the tenant was not provided with her right to quiet enjoyment of the rental unit, I find that the amount claimed is excessive.

With respect to the final element in the test for damages, I am not satisfied that the tenant told the landlord to stop bothering her, but the tenant described backing away from him and he got closer. The tenant also testified that she avoided the landlord. I also found the tenant to be quite timid in the hearing, and I am satisfied that the tenant not only felt uncomfortable by the landlord's interactions with the tenant, but was uncomfortable verbalizing her discomfort to him. I find that the tenant attempted to mitigate by avoiding the landlord to reduce the amount of contact, and I further find that the landlord acted irresponsibly by perhaps being too familiar and ought to have considered the landlord's responsibilities as a landlord and the tenant's discomfort.

In the circumstances, I find that the tenant has established a monetary claim as against the landlord for half a month's rent, or \$325.00.

Conclusion

For the reasons set out above, the tenant's application for more time to dispute a notice to end tenancy is hereby dismissed as withdrawn.

The tenant's application for an order cancelling a notice to end tenancy for landlord's use of property is hereby dismissed as withdrawn.

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 \$325.00.

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: August 06, 2014

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Residential Tenancy Branch

