



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

*MNDC, DRI, FF*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss of quiet enjoyment, for the cost of replacing a sofa, cleaning a rug and for the recovery of the filing fee. The tenant also applied to dispute a rent increase.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Since the tenancy has ended, the tenant's application to dispute a rent increase is moot and accordingly dismissed.

### **Issues to be decided**

Did the tenant suffer a loss of quiet enjoyment? Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on December 01, 2012 for a fixed term of one year. At the end of the fixed term the tenancy continued on a month to month basis. The monthly rent at the end of the tenancy was \$1,550.00, payable on the first of each month.

The tenant stated that sometime in May 2014, there was a water leak in the rental unit and restoration work was ordered. The tenant had plans to leave home for two weeks for his own wedding and therefore would be away during the time that the restoration work was scheduled.

Prior to leaving home, the tenant met with the contractor and gave him a key to the rental unit and permission to carry out the work in the tenant's absence. The tenant also informed the landlord that he was going away for two weeks and gave the landlord his contact information.

The tenant testified that since he had given the contractor permission to enter the unit in his absence, he installed a camera to monitor and record the activity inside the unit. The tenant stated that during his holiday, he visited the lobby of the hotel to view the recording. He noticed some questionable images but due to technical problems was unable to view the entire recording. The tenant stated that he spent a considerable amount of time trying to view the tape. He also stated that his peace of mind was affected and he could not fully participate in the celebratory activity of his wedding.

Upon viewing the tape, the tenant saw that the landlord had entered the unit with a female and engaged in sexual activity on his sofa. The tenant stated that through the entire time he was away which included his honeymoon, he and his wife could not fully celebrate their wedding because the questionable activity inside the rental unit weighed heavily on their minds.

Upon his return, the tenant met with the landlord. The landlord accepted his wrong doing, apologized and offered compensation in the amount of one month's rent. The tenant rejected the offer and the landlord made a second offer which included an additional amount of \$1,000.00 for the replacement of the sofa.

The tenant testified that he was uncomfortable in the apartment and decided to move out. The tenant stated that he could not find a comparable apartment for the same rent and finally signed a one year lease for an apartment that cost \$350.00 more in rent. The tenant moved out on July 31, 2014. The landlord argued that there were comparable apartments available and filed copies of on line listings.

The tenant stated that the landlord had increased the rent without proper notice and did not use the approved form. In October 2013 the landlord sent the tenant an email informing him that the rent would be going up by \$100.00. Later the parties negotiated the increase to \$50.00 per month and the tenant paid the additional \$50.00 for three months. The tenant is claiming the return of \$150.00 for the increase that he was not provided proper notice for and was not in compliance with the *Residential Tenancy Act*.

The tenant filed digital evidence which contained excerpts from the recorded material.

The tenant is claiming the following:

1.	Replacement of sofa	\$1,789.76
2.	Cleaning of rug	\$63.00
3.	Dropcam	\$113.22
4.	Difference in rent for new apartment for one year	\$4,200.00
5.	Move into new apartment	\$300.00
6.	Moving services and rental of moving boxes	\$514.84
7.	Compensation for 4 missed days of vacation	\$1,125.14
8.	Rent increase without proper notice	\$150.00
9.	Compensation for loss of quiet enjoyment	\$2,325.00
10.	Filing fee	\$100.00
	<b>Total</b>	<b>\$10,680.96</b>

### **Analysis**

#### 1. Replacement of sofa - \$1,789.76

The landlord agreed that he used the tenant's sofa to engage in sexual activity and offered the tenant \$1,000.00 towards the replacement of the sofa. The tenant stated that the sofa was approximately two years old but did not file any evidence to show what it cost him to purchase this sofa, two years ago. The tenant could not recall exactly what he had paid for the original sofa. The tenant filed a copy of an invoice for the purchase of a new sofa in the amount of his claim. Since the original sofa was two years old and in the absence of proof of the value of the original sofa, I award the tenant the amount of the landlord's offer of \$1,000.00.

#### 2. Cleaning of rug \$ 63.00

The tenant filed proof of the cost incurred to clean the rug. Based on the testimony of both parties, I find that the landlord must bear the cost of cleaning the rug.

#### 3. Dropcam - \$113.22

The tenant chose to install a camera inside his apartment and accordingly must bear the related costs.

4. Difference in rent for new apartment for one year - \$4,200.00

The tenant chose to rent an apartment at a higher rent and has not proven that comparable apartments were not available for rent at the time he chose to move out. Accordingly the tenant's claim for the rent differential is dismissed.

5. Move into new apartment - \$300.00

6. Moving service and rental of moving boxes - \$514.84

The tenant occupied the apartment for two months after the incident and therefore must bear the cost of his move.

7. Compensation for 4 missed days of vacation - \$1,125.14

The tenant made his travel arrangements prior to the incident and would have incurred the cost of his trip regardless of the ensuing events. Even though the tenant was away from the rental unit, the activities of the landlord inside the rental unit caused the tenant considerable discomfort and ruined the enjoyment of his own wedding.

*Residential Tenancy Policy Guideline #16* states that an arbitrator may award "nominal damages" which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Accordingly I find it appropriate to award the tenant \$1,000.00 towards his claim.

8. Rent increase without proper notice - \$150.00

The tenant had the opportunity to dispute a rent increase without proper notice at the time the increase was implemented. The tenant did not do so and paid the increased rent.

Black's Law Dictionary defines the "doctrine of laches" in part, as follows:

[The doctrine] is based upon maxim that equity aids the vigilant and not those who slumber on their rights.

...neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity.

Following from the tenant's failure to dispute the rent increase in a timely manner and pursuant to the doctrine of laches, I find that this aspect of the tenant's application must hereby be dismissed.

9. Compensation for loss of quiet enjoyment - \$2,325.00

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has 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.

Every tenancy agreement contains an implied covenant of quiet enjoyment. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes. The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace, without disturbance and with reasonable privacy.

Based on the testimony of both parties and the evidence before me I find that the conduct of the landlord was egregious and unacceptable which resulted in the tenant's discomfort inside the rental unit. Accordingly I award the tenant his claim for compensation in the amount of \$2,325.00.

Filing fee - \$100.00

The tenant has proven most of his claim and therefore is entitled to the recovery of the filing fee.

Overall the tenant has established the following claim:

1.	Replacement of sofa	\$1,000.00
2.	Cleaning of rug	\$63.00
3.	Dropcam	\$0.00
4.	Difference in rent for new apartment for one year	\$0.00
5.	Move into new apartment	\$0.00
6.	Moving services and rental of moving boxes	\$0.00
7.	Compensation for 4 missed days of vacation	\$1,000.00
8.	Rent increase without proper notice	\$0.00
9.	Compensation for loss of quiet enjoyment	\$2,325.00
10.	Filing fee	\$100.00
	<b>Total</b>	<b>\$4,488.00</b>

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the amount of \$4,488.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

**Conclusion**

I grant the tenant a monetary order for **\$4,488.00**.

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 27, 2015

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Residential Tenancy Branch

