



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RP, OLC, MNDC

### Introduction and Procedural Matters

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order requiring the landlord to make repairs to the rental unit, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and a monetary order for money owed or compensation for damage or loss.

The tenant and landlord MF, who stated he was a principal in the named corporate landlord, and the landlord's witness, the caretaker/maintenance worker for the residential property, were present at the beginning of the hearing. The tenant objected to the landlord's witness being allowed to testify at the hearing as she was not informed prior to the hearing that this witness would be allowed to participate. The tenant was informed that the witness would be excused from the hearing until his turn to testify, but that the witness would be allowed to provide testimony on behalf of the landlord.

The witness exited the conference call hearing, the tenant and the landlord were affirmed prior to testifying, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit, for an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and for monetary compensation?

Background and Evidence

Neither party provided a copy of the written tenancy agreement; however, I heard undisputed evidence that the tenancy began on December 1, 2014 and that monthly rent is \$550.00.

*In support of her application, the tenant submitted the following:*

- The elevator, which is located next door to her rental unit, has made a loud grinding noise all night long, with people coming and going during the night, which has impacted her sleep and quiet enjoyment of the rental unit. Additionally, there were 4 occasions when the elevator has stopped working.
- The elevator and hallways have consistently smelled of marijuana and the landlord has refused to correct the issue of drug usage.
- The tenant next to this tenant has consistently pounded on her door, spat at her, and threw his cigarette butts at this tenant, issues the landlord has failed to address.
- There is a persistent cockroach infestation, which has caused her to continue to use pesticide spray, and for which the landlord has failed to address this issue.
- The landlord has entered her rental unit without a proper 24 hour notice.

*In response to the tenant's application, the landlord submitted the following:*

- The landlord has a maintenance contract with an elevator company and the elevator is checked once a month. Additionally, the elevator was only stopped a day or two when the capacitors were replaced in July.
- The landlord offered the tenant a rental unit in the same residential property, on the first floor, far from the elevator or the tenant of which this tenant complained. The tenant refused, according to the landlord.
- The landlord has a contract with a professional pest control company and that when the landlord receives a complaint about issues such as cockroaches or bedbugs, the company is called to inspect the rental units. In this case, the

agent for the pest control company inspected the rental unit found no trace of cockroaches.

- The landlord disputed that the tenant of which the tenant complained would be situated so that he could spit at or throw cigarette butts on the tenant, due to his balcony placement. The landlord stated that the other tenant is a long-time resident and has had no issues. The landlord submitted further that the other tenant and tenants have complained of the tenant throwing objects at her door when someone passes in the hallway, and the landlord stated that he lives close to the tenant's rental unit and has heard the tenant throw objects at her door, at least 4 times.
- The landlord submitted further that another tenant living across the hallway from this tenant recently vacated due to the tenant's behaviour.

*In further response to the tenant's application, the landlord's witness submitted the following:*

- The tenants who used drugs and smoked marijuana were evicted quite some time ago, and that there is presently no issue with marijuana. The witness submitted further that he rides the elevator all the time and walks in the hallways and does not smell marijuana.
- The witness submitted that he has had many complaints from other tenants about this tenant.
- The witness submitted further that they have addressed and dealt with any complaint made by the tenant, and that the only time they entered the rental unit without a 24 hour notice was in the instance of leaking pipes from the toilet, which they considered an emergency situation. The witness stated that he is a former plumber and is aware of the significance of leaking pipes.

It is noted that shortly after the landlord's witness began testifying, at approximately the 57 minute mark of the hearing, the tenant interrupted the hearing, stated that I, the Arbitrator was biased, without any explanation as to why she believed that, and abruptly exited the hearing by hanging up her telephone. The tenant did not return to the conference during the balance of the hearing.

### Analysis

I am left to guess as to why the tenant abruptly exited the hearing prior to its conclusion. Perhaps the tenant was upset that the landlord's witness was allowed to testify; however, there is no requirement under the Rules which require the name of the witness to be provided in advance of the hearing.

The tenant further had attempted to make personal, disparaging comments about the landlord after his testimony; however, the tenant was disallowed from making those comments as they were not relevant to the issues. The landlord did make one personal comment about the tenant during his testimony; however, this comment came without warning and was immediately discounted as this comment had no relevance to the issue, as the tenant was informed.

As to the tenant's application, section 10.1 of the Rules states that the arbitrator may conduct the dispute resolution proceeding in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

In the case before me, I find the tenant failed to fully participate in the hearing by her abrupt departure prior to the conclusion of the hearing. Due to this, I find the tenant failed to diligently pursue her claim and in her absence, I dismiss her application, without leave to reapply.

### Conclusion

The tenant's application is dismissed, without leave to reapply.

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 2, 2015

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Residential Tenancy Branch

