



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, LRE, OCC, PSF, RP

### Introduction

A hearing was conducted by conference call in the presence of the tenant applicant and in the absence of the respondent landlord although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on August 24, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a.        Whether the tenant is entitled to an order for repairs?
- b.        Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- c.        Whether the tenant is entitled to a monetary order?
- d.        Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on June 22, 2002. The present rent is \$450 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$225 at the start of the tenancy.

The rental property is a house. There are tenants living on the top floor of the house. The landlord's parents live on the main floor. However, they spend considerable time outside of the country. When they are away the property is rented to others. This last summer the landlord has rented it through Air B&B.

The tenant lives in the basement on a shared accommodation basis. Unfortunately the person who he shared the basement with passed away in late 2014. The landlord has not re-rented that bedroom as of yet.

Application for a Repair Order

After hearing the evidence presented by the tenant I ordered the landlord make the following repairs by October 31, 2015:

- a. Repair the flushing mechanism for the toilet..
- b. Replace the shower including the shower stall.
- c. Repair the cabinet for the bathroom sink.
- d. Replace the outside light socket and install a new light
- e. Replace the inside light socket and install a new light..

Application for an Order Reducing the Rent if the Repairs are not completed:

I further ordered that if the landlord fails to make the repairs as provided above by October 31, 2015 the rent shall be reduced by \$50 per month commencing November 1, 2015 and on the first day of each month thereafter until the repairs are completed.

Application for a monetary Order::

The tenant seeks a monetary order for the reduced value of the tenancy and for breach of the covenant of quiet enjoyment in the sum of \$3000.

The tenant relies on the following evidence:

- The tenant testified the landlord is trying to force him to leave and he has been forced to dispute at least 6 Notices to End Tenancy.
- The rental property was sold from the parents to their daughter in 2012. I determined that the conduct of the parents (as landlords) prior to 2012 and the various Notices that were served are not relevant to a claim against the present landlord as she was not a landlord and is not responsible for the conduct of her parents.
- On March 23, 2012 the tenant was successful with his application to cancel a two month Notice to End Tenancy. The landlord did not show for the hearing.

- On April 16, 2015 a hearing was held to consider the tenant's application to cancel a two month Notice to End Tenancy. The decision was rendered on April 27, 2015 and the arbitrator ordered that a 2 month Notice to End Tenancy dated March 5, 2015 be cancelled. The decision states: "The Landlord is warned that issuing any further invalid notices to end the tenancy may be found to be harassing the tenant."
- On April 16, 2015 after the hearing but prior to receiving the decision from the previous arbitration the landlord served another two month Notice to End Tenancy for landlord use. In a decision dated June 15, 2015 the arbitrator cancelled the Notice to End Tenancy. The decision states: "The Landlord was previously warned in the April 27, 2015 decision that issuing any further invalid notices to end the tenancy may be found to be harassing the Tenant. I agree with that warning and now conclude that the Tenant will be at liberty to file an application for Dispute Resolution to seek monetary compensation for loss of quiet enjoyment due to harassment if any further attempts are made to end the tenancy for unlawful reasons or in bad faith." The tenant objected to the testimony given by the landlord in these hearings where the landlord alleged he was selling drugs to minors.
- The tenant testified his enjoyment of the rental unit has been significantly reduced for the last 5 or 6 years because the landlord has failed to make the necessary repairs. The photographs show significant repairs are necessary especially in the shower area and under the sink.
- The tenant testified he has been harassed by the landlord because of the unwarranted Notices to End Tenancy.
- The tenant testified the police have been called to attend on 5 occasions over the last 1 ½ years because of bogus complaints of the landlord. He testified the most recent one occurred at the end of July when the police attended because of a bogus complaint that he was banging pots. The police attended and found the complaint of his behaviour to be without foundation.
- The landlord's husband and co-owner of the rental property has threatened him on 5 different occasions. The husband was abusive when the tenant asked that he effect repairs and told him to "F...k off."
- The landlord's parents live overseas for approximately one half of the year. However, when home they enter the rental unit without giving proper notice two to three times a month. On one occasion they entered to remove the belongings of the deceased

roommate. Another time they removed a window. On one occasion they took the tenant's broom. That broom has not been returned.

Analysis:

Section 32 of the Residential Tenancy Act provides as follows:

**Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I determined based on the evidence presented that the landlord has failed to provide and maintain the residential property in a state of decoration and repair having regard to the age, character and location of the rental unit that make it suitable for occupation by a tenant. The photographs disclose significant problems with rental unit especially with the shower and sink that have not been addressed by the landlord. The landlord has been asked many times to make the repairs but has failed to do so. I have also considered there is an obligation on the tenant to act reasonably to lessen his loss and this includes an obligation to file an application for a repair order within a reasonable time. In the circumstance I determined the tenant is entitled to \$450 in compensation for the reduced value of the tenancy caused by the landlord's failure to properly repair the rental unit for the last 9 months. I determined it was not appropriate to award compensation prior to that date as the tenant has not acted reasonably in failing to file an Application for Dispute Resolution seeking a repair order in a timely way.

Further, section 28 of the Act provides as follows:

**Protection of tenant's right to quiet enjoyment**

- 28** 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.

Section 30 provides:

**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).

Policy Guideline #6 includes the following:

**Harassment**

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.<sup>3</sup> As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

I determined the landlord has breached the covenant of quiet enjoyment and the tenant is entitled to compensation based on the following:

- The landlord's husband (and co-owner) has been abusive and threatening towards the tenant on many occasions.
- I determined the landlord has engaged in an inappropriate and wrongful pattern of harassment in order to force the tenant to vacate. The landlord was warned on two separate occasions by the arbitrator that her conduct could lead to a claim for compensation for breach of the covenant of quiet enjoyment. I have considered (to the landlord's credit) that she has not attempted to serve an inappropriate Notice to End Tenancy since receiving a copy of the decision from the second hearing. I have also considered the landlord served the Notice to End Tenancy in April before she received the warning contained in the first decision. However, the actions of the landlord when combined with the other conduct amount to a breach of the covenant of quiet enjoyment.
- The landlord failed to take steps to ensure the upstairs tenant (her parents) would not illegally enter the tenant's rental unit.

I determined the tenant is entitled to compensation in the sum of \$450 for the breach of the covenant of quiet enjoyment.

**I ordered the landlord(s) to pay to the tenant the sum of \$900 in satisfaction of this claim.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Application to suspend or set conditions on the landlord's right of entry:

I dismissed the tenant's application to suspend or set conditions on the landlord's right of entry at this time as the problems appear to relate to a lack of knowledge. Most of the problems relate to the conduct on the landlord's parents and not the landlord herself. The landlord has an obligation to prevent her parents from illegally entering the rental unit. The relevant provisions

of the Act is included as part of this decision. If the landlord or the landlord's parents continue to breach this section the tenant has a right to file another application.

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: October 13, 2015

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Residential Tenancy Branch

