



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** MNDC, MNSD, FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for lost wages, for the return of rent, for the return the security deposit, for a move in fee and for the recovery of the filing fee. 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.

These parties attended a hearing on June 16, 2015 to address an application made by the landlord to retain the security deposit and for other remedies. In a decision dated June 29, 2015, the Arbitrator dealt with the issues of the security deposit and the move in fee. Therefore, since these matters have already been heard, I did not hear or make findings with regard to this portion of the tenant's claim.

Accordingly, this hearing only dealt with the tenant's application for a monetary order for compensation for lost wages, for the return of rent and for the recovery of the filing fee.

### **Issues to be decided**

Has the tenant established a claim for compensation?

### **Background and Evidence**

The tenancy started in April 2014 and ended on September 30, 2014. The monthly rent was \$1,750.00 due on the first of each month.

The tenant testified that for the months of August and September, the landlord made several requests to visit the rental unit for the purpose of showing the unit to prospective buyers and for checking on who was living in the rental unit. The tenant agreed that the landlord provided her with adequate notice in advance of every visit.

The tenant testified that these visits from the landlord made her uncomfortable and they took up several hours of her day. The tenant stated that the landlord would request a window of time which often extended for 3-4 hours. The tenant testified that since the landlord visited multiple times, she experienced a loss of quiet enjoyment and felt harassed and therefore is entitled to the return of rent for the of August and September.

The landlord agreed that he had multiple showings but added that the tenant was notified of every showing with proper notice. The landlord stated that the tenant's daughter was living in the unit and that she rented the unit through Air BnB – a service that provides temporary accommodation to visitors/tourists. The landlord stated that the tenant admitted it to him in person and also during the previous hearing, when she stated that she was not living in the rental unit full time and was renting the unit to temporary occupants through the AirBnB website. The landlord stated that in order to protect the property and to ensure that it was not being rented out for short stays, he visited the unit multiple times.

The tenant also stated that the landlord behaved in a “militant” manner towards her which caused her stress. The tenant explained that she worked in the same hospital as the owner of the rental unit and feared that the problems with the rental unit would cause the owner to complain to their common employer, thereby putting her job and her nursing licence at risk.

The tenant stated that the stress associated with the rental situation forced her to miss work and to incur a loss of income. The tenant is claiming \$1,670.00 in lost wages and has filed copies of her pay stubs.

### **Analysis**

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”. 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. Every tenancy agreement contains an implied covenant of quiet enjoyment.

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.

With regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment and harassment, I have reviewed the submissions of both parties.

I find that the last two months of the tenancy were very stressful on both parties for different reasons. It is my determination that the parties found themselves in a situation which had progressively evolved and for which each had made some contribution to its unfolding.

The landlord alleged that the tenant was using the unit as a source of income by renting to temporary visitors/tourists through the AirBnB website. The landlord made multiple visits to ensure that there were no short term tenants or the tenant's daughter residing in the rental unit. The landlord also stated that he visited the rental unit for the purpose of showing the unit to prospective buyers.

Regarding the landlord's right to enter the rental unit, Section 29 of the *Residential Tenancy Act* states that 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.

In this case, based on the testimony of both parties, I find that the landlord provided adequate notice prior to entering the rental unit and therefore did not breach the *Act*, with regard to visiting the rental unit. The tenant had the option of notifying the landlord of times that she was unavailable to show the unit and to offer alternative dates/times.

Based on the testimony of both parties and the decision dated June 29, 2015, I find on a balance of probabilities that it is more likely than not that the tenant did not live in the unit full time, that the tenant's daughter was occupying the rent without authorization from the landlord and that the tenant was renting the unit for temporary stays via the Air BnB website. Accordingly I find that the tenant breached the tenancy agreement.

Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for harassment and intimidation and therefore the tenant's claim for compensation in the amount of the return of two months rent is dismissed.

The tenant also applied for lost income when she missed work due to problems with the “*militant*” attitude of the landlord and with the alleged threats of a suspension of her nursing license.

Based on the testimony and documentary evidence of both parties, I find that the tenant has not proven that her interactions with the landlord caused her to miss work and incur a loss of income. Therefore her claim in the amount of \$1,670.00 for lost wages is also dismissed.

Since the tenant has not proven her claim, she must bear the cost of filing her application.

### **Conclusion**

The tenants’ application is dismissed in its entirety.

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: November 12, 2015

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Residential Tenancy Branch

