Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, LRE, MNDC, OLC

Introduction
The Application for Dispute Resolution filed by KKDVG and SPWH makes the following claims:

- An order that the landlord comply with the Act, regulations or tenancy agreement
- An order suspending or setting conditions on the landlord's right to enter the rental unit.
- A monetary order in the sum of $1555 for lost wages and counselling fees
- An order to recover the cost of the filing fee.

The Application for Dispute Resolution filed by MTW makes the following claims::

- An order that the landlord comply with the Act, regulations or tenancy agreement
- An order suspending or setting conditions on the landlord's right to enter the rental unit.
- A monetary order in the sum of $740 for lost wages, counselling fees and mental stress
- An order to recover the cost of the filing fee.

The Application filed by KKDVG and SPWH relates to the upper unit in the rental property. The Application filed by MTW relates to the lower unit in the rental property. The Director granted the tenant's application that the two applications be joined.

A hearing was conducted by conference call in the presence of all parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Preliminary Matter:
At the start of the hearing the tenant SPWH made the submissions that he never signed the tenancy agreement and he is not a tenant. The landlord did not dispute this submission. An arbitrator only has jurisdiction to consider matters relating to a residential tenancy relationship between a landlord and a tenant. Given the submission of the parties I ruled that SPWH is not a tenant for the purpose of this hearing and his claim is dismissed. As a result the monetary brought in the Application filed by KKDVG and SPWH is reduced by $480 which is the amount claimed by SPWH.

Ruling at the End of the Hearing:
Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. The hearing was lengthy and lasted

past the 90 minutes scheduled by the Registry. The tenants were given a full opportunity to present their case and they both stated they had completed what they wanted to say before I proceeded with the landlords' response. The landlords' responded. Both tenants were given an opportunity to respond to what the landlord had to say. The landlord objected and raised a couple of points disputing the factual veracity of the evidence. I was preparing to close the hearing. The tenant KKDVG stated at this stage she wanted an opportunity to present testimony as to the remedies she was seeking. I gave her an opportunity to identify what she was seeking which is as follows:

a. Compensation
b. An Apology
c. An assurance that the landlord will not repeat their behaviour
d. An assurance that they be permitted to bring another application if the landlord continues with their behaviour
e. To recover the cost of the filing fee
f. The landlord stop harassing previous tenants who had given the tenant support letters.

The tenant KKDVG requested that the matter be adjourned so that she could make further submission on the orders she was seeking. The landlord opposed. I dismissed the application of the tenant KKDVG for an adjournment to give her an opportunity to make further submissions for the following reasons:

- The issues of compensation and the request to recover the cost of the filing fee were raised in their Application for Dispute Resolution and they will be dealt with in this decision. The remainder of the issues are not raised in the Application for Dispute Resolution. One of the fundamental principles of out legal system is that before a claim can be brought the applicant must give the respondent sufficient notice.
- Apart from the request for compensation and the filing fee there is no authority for an arbitrator to make the orders requested.
- The tenants are obliged to raise their entire case when they make their original application. It is contrary to the principle of natural justice to allow an applicant to raise new matters without notice to the other side immediately prior to the close of the hearing.
- To grant an adjournment of the hearing at this stage would unnecessarily delay the hearing.
- Much of what the tenant intended to speak to would not be admissible as it is not within the arbitrator's authority to grant.

I find that the Application for Dispute Resolution/Notice of Hearing filed by each tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided:

The issues to be decided in the claim filed by MTW are as follows:

- Whether the tenant is entitled to an order that the landlord comply with the Act, regulations or tenancy agreement

- Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- Whether the tenant is entitled to a monetary order in the sum of $740 for lost wages, counselling fees and mental stress
- Whether the tenant is entitled to recover the cost of the filing fee.

The issues in the application filed by KKDVG are as follows:

- Whether the tenant is entitled to an order that the landlord comply with the Act, regulations or tenancy agreement
- Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit.
- Whether the tenant is entitled to a monetary order in the sum of $1555 for lost wages and counselling fees
- Whether the tenant is entitled to an order to recover the cost of the filing fee.

Background and Evidence

The tenancy between MTW and the landlords started on August 1, 2015 and continues on a month to month basis. The rent is $1015 per month payable on the first day of each month. The tenant(s) paid a security deposit of $525 and a pet damage deposit of $525. However, there has been an issue between the tenant and the landlord about the landlord demanding a pet damage deposit in excess of what is permitted.

KKDVG lived in the lower suite for 3 years. She subsequently moved to the upper suite in October 2014. The present rent is $1350 per month due on the first day of the month. The tenant has paid a security deposit of $675 and a pet damage deposit of $500 at the start of the tenancy.

The relationship between KKDVG and the landlords has deteriorated in the last few months. On October 10, 2015 the landlord wrote a breach letter to the tenant setting out a number of complaints. The landlord subsequently served a one month Notice to End Tenancy on the Tenant on tenant that set the end of tenancy for November 30, 2015. The tenant disputed this Notice. A hearing was held on December 21, 2015. During that hearing the parties reached a settlement where they mutually agreed to end the tenancy on April 30, 2015.

MTW relies on the following evidence to support his claim

- The landlord demanded the tenants provide a pet deposit that was more than what is permitted by the Residential Tenancy Act. He moved into the rental unit on August 1, 2015 and took responsibility for the cat that was there. The previous tenant had paid a pet damage deposit. In September he asked if the landlord would permit a roommate. The roommate had a cat and the landlord demanded the roommate pay a second pet damage deposit. Eventually, the pet damage deposit was returned to the previous tenant, the tenant paid a pet deposit and his proposed roommate paid a pet damage deposit which was returned after his proposed roommate left.

- The tenant referred to an e-mail from the landlord to the tenant dated August 1, 2015 where the landlord stated that the tenant was not permitted to "sublet, air bnb or couch surfer (any shared economy, profit making etc.). The letter goes on and states "Any breach of agreement will result in eviction."
- The tenant objected to the manner in which the landlord vetted the assessment of his proposed roommate. At the time the tenant agreed to enter into the tenancy agreement with the landlord that parties orally agreed the tenant would make a request of the landlord. The landlord considered this request but objected when the landlord became aware the proposed roommate was only going to stay one month. The landlord has since told the tenant he is not permitted to have roommates/co-tenants in the future because of the hassle the landlord went through for to investigate whether the proposed roommate/co-tenant was appropriate.
- The tenant refers to an e-mail (Doc. 74) dated October 6, 2015 where the landlord states the dealings with his proposed roommate/co-tenant were taking too much time, the landlord was mislead and the tenant was cautioned about taking roommates in the future. The landlord sent a second e-mail on October 6, 2015 (Doc. 75) stating the landlord feels it is within the landlord's right to impose restrictions on roommates.
- The tenant relies on a letter dated November 22, 2015 (Doc. 91) from the roommate who stayed for one month setting out how he witnessed the landlord intentionally inflicting emotional distress on the tenants.
- The tenant objected to the conduct of the landlord of requesting to inspect the rental unit without giving the notice set out in the Act.
- The tenant referred to an e-mail dated October 23, 2015 (Doc. 107) where the tenant states he has talked to an information officer of the Residential Tenancy Branch and sets out his understanding about the landlord's right of access to the rental unit.
- The tenant also refers to an e-mail dated October 23, 2015 (Doc. 108) asking that the landlord tell him when she intends to conduct an inspection as he does not want to cancel his work commitments.
- The tenant also objects to the threatening and confrontational attitude exhibited by KS (who is actively managing the rental property at the present time). He testified the landlord is continually harassing him and threatening him with eviction when there is no basis for such action.
- The tenant relies on a letter dated November 22, 2015 from LM (Doc. 110) stating that her complaints about the tenant were not meant to have the landlord evict her neighbours.
- The tenant referred to a number of letters and e-mails exchanged between the parties where each party sets out their position.

The tenant KDVG testified as follows:

- The parties were involved in a hearing on December 21, 2015 which involved the tenant's application to cancel a one month Notice to End Tenancy. The parties entered into a mutual agreement to end the tenancy on April 30, 2016.

- The tenant testified she lived in the rental unit and dealt with SS for 3 years without problems. Since KS has taken over the management of the rental property there has been an ongoing and escalating pattern of harassment and persecution.
- The e-mails are threatening and defamatory to the tenant and other housemates.
- The Notices of improper conduct are made up and exaggerated.
- In December 2014 she had a telephone conversation with both landlords in which she voiced her frustration about the changes in management and the aggressive and intimidating approach of KS. She referred to Doc. 92 which is a phone call log of that conversation.
- KS described herself as "the new Sheriff" who was going to be more strict in dealing with the tenants.
- On July 1, 2015 the tenant e-mailed the landlord (Doc. 93) stating it was fantastic to see and chat with the landlord, recorded her objection to the large number of e-mails and told the landlord she would not be responding to her e-mails but that she would be available by phone or in person..
- On July 6, 2015 (Doc. 94) the landlord responded with an e-mail to SH setting out her position that the intent of the e-mail is not to overwhelm anyone but to be sure there is a clear understanding of braches made by the tenants and how to fix it and avoid eviction.
- The tenant sent an e-mail to the landlord (Doc 95 which is not dated but appears to be after October 11, 2015) again objecting to the numerous emails and the threats to evict. The email goes on and states if "KS and … does not correct this problem within 15 days (October 27, 2015) I shall have no choice but to file a dispute resolution on the grounds on the infringement of quiet enjoyment,"

The landlords dispute MTW testimony as follows:

- The tenant MTW breached the tenancy agreement.
- The landlord has always given the tenants proper notice. It has been customary for the landlord and acceptable to all of our tenants in the last 26 years to exchange 24 hour notice of intent to enter for inspection of repairs/maintenance. These two tenants are the first who have objected to the use of e-mail.
- The landlord refers to a letter dated October 19, 2015 from the landlord to the tenant (page 40 44) where the landlord sets out their position and responds to the tenants letter dated October 13, 2015.

The landlords dispute the testimony of KDVG as follows:

- SS managed the property for many years. However, she has suffered some health issues and KS has taken over the management of the properties.
- That the landlords have legal and just cause to end the tenancy of KDVG. The tenant KDVG breached the tenancy agreement in many respects including:
    - The tenant allowed a "van guy" to park his van in the lane way parking, live in it, and use the housed facilities
    - The tenant has an uninsured vehicle parked in the laneway

  - The tenant has a history of paying the rent late and needing reminders to pay the rent.
  - The tenant created an opening in the fence to allow for overflow into the neighbour's yard because she was housing too many chickens (approximately 8 over the maximum 4 permitted by Vancouver City Bylaws
  - The tenant covered the grass with bark mulch without permission
  - The tenant allowed debris such as wood piles and mattress on the property
  - The tenant used a fire pit in the backyard
  - The tenant provided reports of excessive noise and the use of a circular saw
  - The tenant failed to provide documentation required city registrations for the chicken.
  - The tenant built a greenhouse on the top floor front deck without the landlord's permission.
- On October 6, 2015 the landlord e-mailed the tenant stating (Doc. 21) the condition of the property is not acceptable and the debris and mattresses must be removed by October 16, 2015.
- On October 7, 2015 SPWH asked the landlord to telephone him.
- The landlord attempted to contact him on October 7, 2015 but SPWH was on another call.
- It appears a conversation occurred between the SPWH and the landlord. He responded by e-mail (Doc. 22) that includes the following: "I feel I have been unfairly threatened by your previous message. Veiled threats to evict us (see email to K on Sunday, October 4th and this message) are very distressing. We continue to be open to working with you to ensure everyone is satisfied with the condition of the property but be need open, respectful communication."
- On October 10, 2015 the landlord gave the tenant a formal breach letter
- The landlord testified the tenant chose to breach the Residential Tenancy Act and Vancouver City Bylaws.
- The landlord served a one month Notice to End Tenancy on the tenant dated October 19, 2015.
- The tenants chose to disrupt other occupants of the house and the landlord rather than resolving problems amongst themselves.
- The landlord proposed a mutual agreement to end the tenancy due to the deterioration of the landlord/tenant relationship. This is not "coercing the tenants into signing agreements to reduce tenants' rights."

Analysis: - Claim of MTW:

Whether the tenant is entitled to an order that the landlord comply with the Act, regulations or tenancy agreement?

The parties have resolved the issue of dealing with the landlord's demand that the tenant and his roommate/co-tenant pay a pet damage deposit in excess of what is permitted by the Act. I determined it is not appropriate to make any further orders with respect to this issue.

The tenant submits the landlord is in breach of the tenancy agreement and the Residential Tenancy Act in denying the tenant the opportunity to have a roommate/co-tenant in future.

The tenancy agreement dated July 30, 2015 identified the tenant as the tenant. Paragraph 11 of the agreement incorporates section 9 of the standard terms which provides as follows:

> **Occupants and guests**
>
> **9** (1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
>
> (2) The landlord must not impose restrictions on guests and must not require or accept any extra charge for daytime visits or overnight accommodation of guests.
>
> (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the *Residential Tenancy Act*.

The tenancy agreement included the provision "1. We do not require a lease agreement (fixed term) but we do require commitment to a one year (month to month) tenancy."

I do not accept the submissions of the landlord. The provision of the tenancy agreement is contradictory. You cannot have a legal agreement which provides for a month to month tenancy but at the same time requires a one year commitment. In the absence of an agreement to the contrary the Act does not prevent a tenant from having a roommate (without the need for the roommate to become a co-tenant). The protection given by the landlord is the right to end the tenancy if there are an unreasonable number of people residing in the rental unit.

However, in this case the tenant orally agreed with the landlord that he would obtain the landlord's permission to have a roommate/co-tenant. If would have been much better for the landlord to incorporate this into the written agreement. However, that was not done. I am satisfied that parties made this agreement as evidenced by the tenant's request with regard to his proposed roommate. However, I determined the landlord cannot unreasonably refuse the tenant's request and cannot unilaterally change the oral contract. In my view the position that the landlord would not accept a proposed roommate who was to stay one month is unreasonable. I do not accept the submission of the landlord that "we do require commitment to a one year …" can be interpreted to give the landlord this authority as the tenant's commitment of one year does not require his roommate to make such a commitment. I cannot find any other provisions in the tenancy agreement or Act gives the landlord this authority. The tenancy

agreement should be interpreted contra proferentum (against the party who drafted the agreement) where there is ambiguity. Further, the landlord represented prior to the start of the tenancy agreement that the tenant could have a roommate/co-tenant provided the landlord approved.

As a result I ordered that the landlord comply with the tenancy agreement and permit the tenant to have a roommate/co-tenant provided the tenant makes such a request and such permission shall not be unreasonably withheld.

Whether the tenant is entitled to an order suspending or setting conditions on the landlord's right to enter the rental unit?

Section 29 of the Residential Tenancy Act provides as follows:

> **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).

I do not accept the submission of the tenant that there is a basis for setting conditions on the landlord's right to enter the rental unit. Section 29(1)(a) gives the landlord the right to enter provided the tenant gives permission at the time of entry or not more than 30 days before the entry. The landlord has not breached the Act by requesting entry at any time. However, the tenant has the legal right to refuse entry to such a request unless the provisions of section 29 of the Act are met. I agree with the submissions of the tenant that the letter dated October 19, 2015 does not comply with the Act and is not an appropriate Notice. However, the landlord has

subsequently given Notices that comply with the Act. Section 29 sets out the rights and obligations of the parties. It is not necessary to make an order that this section applies.

Whether the tenant is entitled to a monetary order in the sum of $740 for lost wages, counselling fees and mental stress?
Section 7 of the Act states as follows:

> **"Liability for not complying with this Act or a tenancy agreement**
>
> 7 (1) if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
>
> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual toss or damage claimed and proof that the party took all reasonable measures to mitigate their loss

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. [find that in order to justify payment of damages under sections 67 of the Act, the Applicant tenant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in losses to the Applicant pursuant to Section 7. It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss, in this case the tenants, bears the burden of proof and the evidence furnished by the Applicant tenants must satisfy each component of the test below:

a. Proof that the damage or loss exists
b. Proof that this damage or toss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
c. Verification of the Actual amount required to compensate for loss or to rectify the damage
d. Proof that the claimant followed section 7(2) of the Act by doing whatever is reasonable to minimize the damage or loss

MTW claimed $600 for work loss, $120 for counselling and $20 for mental distress. Normally lost wages is not a claim that can be made in a Residential Tenancy hearing. However, it is not necessary for me to consider this as the tenant failed to present sufficient evidence verifying his actual loss. Similarly, the cost of counselling is not normally included in a residential tenancy

hearing. However, again it is not necessary to consider this as the tenant failed to present evidence to verify this claim. The claim for lost wages and counselling is dismissed. While the tenant failed to include a claim for compensation for a breach of the covenant of quiet enjoyment in his Application I determined that he has sufficiently notified that landlord he was making this claim and that it should be considered.

Law

Section 28 of the Residential Tenancy 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.

Policy Guideline #6 includes the following: :

> "Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
>
> It is necessary to **balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, h**owever a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.
>
> Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.
>
> …
>
> **Basis for a finding of breach of quiet enjoyment**
>
> Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had 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 for the

purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: ·

- entering the rental premises frequently, or without notice or permission;
- unreasonable and ongoing noise; ·
- persecution and intimidation; ·
- refusing the tenant access to parts of the rental premises; ·
- preventing the tenant from having guests without cause; ·
- intentionally removing or restricting services, or failing to pay bills so that services are cut off; ·
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, ·
- allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

…

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".[3] 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.

After hearing the disputed evidence and submissions I determined the following:

- A misunderstanding by a party of rights and obligations under a tenancy agreement and the Residential Tenancy Act does automatically give the other party a claim for breach of the covenant of quiet enjoyment.
- I do not find the landlord's use of emails amounts to a breach of the covenant of quiet enjoyment. The landlord has a right to ensure her communications with tenants are in a written form so that they can be relied on in the future.
- I do not accept the submission of the tenant that the landlord's misunderstanding with regard to the pet damage deposit gives the tenant the right to claim damages for breach of the covenant of quiet enjoyment.
- I determined the landlord has not wrongfully entered the tenant's rental unit.

- I do not accept the submission of the tenant that a proposal by the landlord that the parties mutually end the tenancy agreement (because she considers that the tenancy agreement has broken down amounts to a breach of the covenant of quiet enjoyment).
- However, I am satisfied the conduct of KS in how she carries out her duties to be overbearing manner that to amount to harassment as evidenced by the following:
    - The tenancy agreement commenced on August 1, 2015. The landlord e-mailed the tenant on that date (Doc. 81) that included a statement "Any breach of agreement will result in eviction."
    - I find the conduct of the landlord in initially allowing the tenant to have a roommate/guest provided the landlord had vetted the prospective applicant and then prohibiting such a process as a breach of the tenant's rights of quiet enjoyment.
    - The Notice dated October 19, 2015 to all suites does not comply with the Act.
    - I accept the evidence of the tenant that the landlord has orally threatened him with eviction if the tenant does not comply with her demands.

Policy Guideline #16 includes the following:

> **"Types of Damages**
> An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right."

I determined the tenant has established a claim against the landlord for nominal damages in the sum of $50. The tenant failed to prove he has suffered out of pocket expenses such as the position of the landlord have caused him financial loss in being unable to find a second roommate/co-tenant.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant MTW the sum of $50 plus the sum of $25 in respect of the filing fee for a total of $75.

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.

Claim of SPWH:

SPWH submitted he is not a tenant. The landlord did not object to the request of SPWH that he be removed as a tenant for purpose of this hearing. In the circumstances I ordered that the claim SPWH by dismissed as he is not a tenant for the purpose of this hearing.

An arbitrator only has jurisdiction to consider matters relating to a residential tenancy relationship between a landlord and a tenant. As a result the monetary brought in the Application filed by KKDVG and SPWH is reduced by $480 which is the amount claimed by SPWH.

Claim of KKDVG:

After carefully considering all of the evidence I made the following determinations:

- I do not accept the submission of the tenant that the use of emails by the landlord amounts to a breach of the covenant of quiet enjoyment. The landlord has a legal right to use emails as a form of communication. The landlord has a right to ensure her communications with tenants are in a written form so that they can be relied on in the future.
- The landlord had a legal right to give the tenant a breach notice that she considered actions by the tenant to be a breach of the covenant of quiet enjoyment and the failure to rectify the situation would result in the landlord taking steps to end the tenancy.
- I do not find that the concerns of the landlord with respect to the condition of the rental unit and property and the efforts to have the tenant rectify the situation as amounting to a breach of the covenant of quiet enjoyment.
- I accept the submission of the tenant that the landlord's Notice dated October 19, 2015 does not meet the requirements of the Act. However, I am satisfied the subsequent Notices complied with the Act.
- The tenant failed to prove the landlord's notices were improper and exaggerated.
- The tenant failed to prove the Notices amount to defamation.
- I determined the landlord has not wrongfully entered the tenant's rental unit.
- I do not accept the submission of the tenant that a proposal by the landlord that the parties mutually end the tenancy agreement (because she considers that the tenancy agreement has broken down amounts to a breach of the covenant of quiet enjoyment).
- However, I am satisfied the conduct of KS in how she carries out her duties to be overbearing manner that to amount to harassment:

The landlord served a one month Notice to End Tenancy that set the end of tenancy for November 30, 2015. A hearing was set and the parties agreed to a settlement at that hearing to mutually agree to end the tenancy for April 30, 2015.

An order that the landlord comply with the Act, regulations or tenancy agreement & An order suspending or setting conditions on the landlord's right to enter the rental unit.

I do not accept the submission of the tenant that there is a basis for setting conditions on the landlord's right to enter the rental unit or an order. Section 29(1)(a) gives the landlord the right to enter provided the tenant gives permission at the time of entry or not more than 30 days before the entry. The landlord has not breached the Act by requesting entry at any time. However, the tenant has the legal right to refuse entry to such a request unless the provisions of section 29 of the Act are met. I agree with the submissions of the tenant that the letter dated October 19, 2015 does not comply with the Act and is not an appropriate Notice. However, the landlord has provided more specific notices and does not now appear to be breaching section 29. Section 29 sets out the rights and obligations of the parties. It is not necessary to make an order that this section applies.

Similarly I dismissed the application that the landlords comply with the Act, regulations or tenancy agreement. The tenancy will be coming to an end at the end of April.

A monetary order in the sum of $1555 for KKDVG for lost wages and counselling fees
The Monetary Order Worksheet filed by KKDVG claims $800 for lost wages and $275 for counselling. Normally lost wages is not a claim that can be made in a Residential Tenancy hearing. However, it is not necessary to consider this as the tenant failed to present sufficient evidence verifying her actual loss. Further, while the tenant did present evidence about the amount she has claimed for counselling, there is insufficient independent evidence that I can determine that the counselling was necessitated by conduct of the landlord. The claim for lost wages and counselling is dismissed. While the tenant failed to include a claim for compensation for a breach of the covenant of quiet enjoyment in his Application I determined that he has sufficiently notified that landlord he was making this claim and that it should be considered.

Many of the tenant's complaints are without merit including the following:

- Complaints relating to the landlord communicating through email.
- Complaints relating to the landlord's proposal of a Mutual Agreement to End the tenancy.
- Complaints relating to the landlord's efforts to clean the property and subsequent one month Notice to End Tenancy.

However, I am satisfied based on all of the evidence presented including the oral testimony of the tenant, the landlord and the documents presented that the landlord has acted in a heavy handed way that amounts to a breach of the covenant of quiet enjoyment and that the tenant is entitled to nominal damages in the sum of $50.

Monetary Order and Cost of Filing fee
I ordered the landlord(s) to pay to the tenant KKDVG the sum of $50 plus the sum of $25 (reduced to reflect the limited success of the tenant) in respect of the filing fee for a total of $75.

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.

Conclusion:

I dismissed the claim brought by SPWH on the basis that that the parties agreed he is not a tenant for the purpose of this hearing. I ordered that the landlord comply with the tenancy agreement and permit the tenant MTW to have a roommate/co-tenant provided the tenant makes such a request and such permission shall not be unreasonably withheld. I ordered the landlord pay to the Tenant MTW the sum of $75. All other claims brought by MTW are dismissed. I ordered that the landlord pay to the tenant KKDVG the sum of $75. All other claims brought by KKDVG are dismissed.

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: December 31, 2015

Residential Tenancy Branch