



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PSF, MNDC

### **Introduction**

This was an application by the tenant seeking compensation for restriction and/or withdrawal of services contrary to section 27 of the *Residential Tenancy Act* (the Act), for disturbance of their reasonable enjoyment contrary to section 28 and to obtain an order that the landlord provide a key to the shared backyard in compliance with section 30.

Both parties were present at the hearing. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present sworn or affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issues(s) to be Decided**

Did the landlord withdraw services and disturb the tenant's peaceful enjoyment? Has the landlord locked the gate to the backyard and refused to provide a key? If so, is the tenant entitled to an Order and compensation and in what amount?

### **Background and Evidence**

The tenancy began July 1, 2015 with rent of \$1150 and the tenant paid a security deposit of \$575.00. The tenant testified that the landlord deprived the tenant of hot water at various times from February 4, 2015. In evidence are various emails between the parties illustrating ongoing issues between them. The landlord lives in the basement of the home and rents the upstairs to the tenants. The emails indicate he disagrees with them showering after 10p.m. and putting out recycling, washing or vacuuming because it disturbs his sleep.

The tenant testified that she and her daughter engage in normal living activities. She has yoga twice a week and her daughter has soccer. This means they shower after coming home but she said it is not after midnight and seldom after 11:00 p.m. She testified that on February 4, 2016, February 11, 13<sup>th</sup>, 25<sup>th</sup>, 27<sup>th</sup> and March 10<sup>th</sup>, 2016, the landlord turned off the hot water after 10p.m. In one case, her daughter had soap in her

hair and could not rinse it off. She asks \$3 a day in compensation for lack of hot water after 10p.m.

The landlord's agent said the landlord has requested no noise after 10p.m. He told her he did not shut down the hot water, there is a natural fluctuation in water pressure and he suffers too when the tenant showers at the same time that he showers. He goes to bed early between 9:30 and 10:00 p.m. The tenant contended that it is not a natural fluctuation. She has heard the noise of the tap being turned off after he arrives home. It is an older home and noise travels. She said she hopes to move after September because of the conflict in life styles between her and the landlord. The landlord's agent said there is little tolerance on either side and a move might be the best solution.

The tenant said the landlord also changed the lock on the gate to the shared backyard on February 19, 2016 after she filed her Application for Dispute Resolution and he refuses to give her a key. This is very inconvenient as she has to take her garbage and recycling through the home. The landlord's agent said he did this for safety reasons as there have been people coming and going and there is crime in the area. The tenant said she has no one coming to them but the landlord has visitors. Also, the landlord never told her his reason for refusing a key. The tenant submits that they are not making noise and any noise the landlord hears is from normal living activities such as showering, laundry and vacuuming. The landlord's agent asked if the tenant had a pet and the tenant said they do not. In evidence is the tenancy agreement, many emails between the agent, the tenant and the landlord and statements of the parties.

### **Analysis:**

As discussed with the parties in the hearing, I find that section 28 of the Act requires a landlord to protect the peaceful enjoyment of the tenant. It does not give similar protection to the landlord. I find the weight of the evidence in this case is that both parties have very different lifestyles that conflict. With respect to restricting the use of the hot water, I find that section 27 of the Act states that a landlord must not terminate or restrict a service or facility if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

In this instance, I find that the deprivation of hot water is not permitted under section 27 of the Act as it is an essential to the tenant's use for living accommodation. . I accept the tenant's testimony that the hot water was turned off or restricted periodically since February 4, 2016. I find the tenant entitled to recover \$3 as she requested for each of the dates the hot water was cut off or restricted, that is 5 times in February and once in March for a total to date of \$18. I do not find the landlord's evidence credible that this was due to a natural fluctuation in water pressure as this was not happening, according

to the evidence, since the beginning of the tenancy but commenced in February 2016. Also, the landlord's emails indicate he was upset at the tenants' showering in the late evening.

I find the weight of the evidence is that the landlord also changed the lock on the back gate denying the tenant access to the back yard. I find this impacted the tenant's ability to put out her garbage and recycling since February 18, 2016. Section 30 of the Act protects the tenant's right of access to the property and section 31 provides that if the landlord changes locks, he must provide a key to the tenant. I find the tenant is entitled to a key to the back gate forthwith. I find insufficient evidence to support the landlord's excuse for changing the lock and not supplying a key to the tenant.

Based on the landlord's failure to provide the essential service of hot water as required under the Act and a key to the lock for the back yard, I find that the tenant had significant disruption of their peaceful enjoyment of the property contrary to section 28 of the Act. I find there were no restrictions in their lease providing they could not shower or do other living activities after 10 p.m. in the evening but I find the landlord's many emails were intrusive and objected to noises from their daily living activities such as showering or doing laundry in the evening. I find the tenant entitled to an additional \$200 for loss of use of the backyard since February 18, 2016 and significant disruption of their peaceful enjoyment. I find that the tenant is entitled to total compensation of \$218 (\$200 + \$18).

### **Conclusion**

The tenant is successful in the application and is granted a monetary award of \$218. No filing fee was paid.

**I HEREBY ORDER the landlord to supply a key to the backyard gate to the tenant forthwith.**

**I HEREBY ORDER that the tenant is entitled to deduct \$218 from her rent to recover her compensation.**

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: March 24, 2016

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Residential Tenancy Branch

