



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on June 10, 2016. The Tenant filed seeking an order to have the Landlord comply with the *Act*, regulation, and/or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's Advocate. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant appeared and requested that his Advocate present his evidence as his agent. For the remainder of the proceeding the Advocate presented evidence and arguments on behalf of the Tenant. All submissions made by the Advocate, on behalf of the Tenant, are referenced in this Decision as being submitted from the Tenant.

Upon review of the Tenant's application, the Landlord clarified the full corporate name of the second respondent listed on the application. Neither party disputed amending the style of cause to include the proper corporate name and the name of the building it was operating as and doing business as. Accordingly, the style of cause was amended to include the correct corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

The Landlord argued that the first named respondent was an owner of the corporation and therefore, she should not be named in this dispute. The Landlord asserted that listing the owner of the corporation as a respondent was piercing the corporate veil.

As per Section 1 of the *Act* a "landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or

- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Applying the above definition provided in section 1 of the *Act*, I find pursuant to section 62 of the *Act*, that the Owner and the Limited Company are properly named parties to this proceeding. My finding does not require piercing the corporate veil; rather, it applies the definition of landlord as stipulated in the *Act*.

The Landlords were represented by one agent at the hearing. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise

On June 30, 2016 the Tenant submitted pages of evidence numbered 1 through 66 to the Residential Tenancy Branch (RTB). A spot check was performed with the Landlord during the hearing. The Advocate affirmed that they served the Landlord with copies of the same documents that they had served the RTB. The Landlord acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Tenant's relevant submissions as evidence for these proceedings.

On July 5, 2016 the Landlord submitted 34 pages of evidence to the RTB which included five dividers. A spot check was performed with the Tenant's Advocate during the hearing. The Landlord affirmed that he served the Tenant with copies of the same documents that he had served the RTB. The Tenant acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's relevant submissions as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all relevant submissions have been considered, not all of those submissions are listed in this Decision.

#### Issue(s) to be Decided

1. Has the Tenant proven the Landlord has breached the *Act*, Regulation, or tenancy agreement?
2. If so, should the Landlord be ordered to comply with the *Act*, Regulation, or tenancy agreement?

### Background and Evidence

The Tenant's month to month tenancy began on September 1, 2014. Rent of \$450.00 is payable on or before the first of each month. On September 1, 2014 the Tenant paid \$225.00 as the security deposit.

The rental unit was described as a "single room occupancy" (SRO) rental unit located on the second floor of the rental building. The building is primarily occupied by tenants who were described as being hard to house.

The evidence and arguments submitted by the Tenant are summarized in point form as follows:

- On February 22, 2016 the Tenant filed an application for Dispute Resolution seeking monetary compensation for loss of quiet enjoyment resulting from the Landlord's failure to take action against another tenant, P.R.;
- On March 10, 2016 the Landlord served the other tenant, P.R., with a 1 Month Notice to end tenancy for cause listing the reason that the tenant, P.R. had significantly interfered with or unreasonably disturbed another occupant or the landlord;
- On April 11, 2016 the Landlord and this Tenant attended the hearing scheduled to hear the Tenant's February 22, 2016 application for compensation for loss of quiet enjoyment. After considering the evidence that the Landlord had served P.R. with the aforementioned 1 Month Notice, the Arbitrator dismissed the Tenant's application on April 11, 2016;
- On April 19, 2016 an object was thrown at the Tenant, allegedly thrown by P.R., in the presence of the Tenant's witness. The Tenant submitted P.R. then approached the Tenant and his witness in an aggressive fashion. The police attended and stated they would speak with P. R. and the Owner. All parties agreed that no further action would be taken, due to the pending eviction of P.R.;
- P.R. did not vacate the rental property on April 30, 2016 in accordance with the 1 Month eviction notice. Rather, P.R. filed to dispute the 1 Month Notice and a hearing was scheduled to hear P.R.'s application on May 25, 2016;
- The Tenant pointed to the Landlord's submission which included a copy of the May 25, 2016 Decision in response to P.R.'s application to dispute the 1 Month Notice. That Decision states the Landlord attended that hearing and withdrew the 1 Month Notice that was served upon P.R. As recorded on page 1 and 2 of that Decision the Landlord testified that *"the Tenant's behaviour has improved and that he does not wish to end the tenancy or pursue an order of possession based on the Notice. The Landlord agreed to cancel the Notice dated March 10, 2016"*;
- The Tenant argued P.R. was an employee of the Landlord and the Landlord knew that P.R.'s behaviour had not improved based on the aforementioned incident of April 19, 2016; which occurred after the issuance of the 1 Month Notice and prior to the May 25, 2016 hearing;
- The Tenant argued P.R. threatened him twice since his April 11, 2016 hearing, once on April 19, 2016 and a second time on May 10, 2016 in front of multiple

witnesses. He asserted that P.R. continues to play his music and drums loud and disturbs him and other tenants, as supported by the witness statement submitted into the Tenant's evidence;

- The Tenant has attempted to mitigate his loss by filing complaints with the Landlord; securing an advocate to assist him; initiate meetings and follow up with the Landlord; collect witness statements; have a witness appear at this hearing; submit extensive evidence to support the Landlord's eviction of P.R.; and file this second application when they found out P.R.'s eviction was withdrawn. The Tenant asserts the Landlord has been negligent and has failed to provide the Tenant with quiet enjoyment.
- The Tenant confirmed the Landlord had offered him the opportunity to relocate to another rental unit; however, given the Tenant's physical disabilities he could not accept a rental unit on a higher floor in case the elevator broke. There was no evidence before me that P.R. had been asked to move to another rental unit or building managed by the Landlord.

The Tenant's witness testified that he works at a company located at a local university and he had volunteered with the SRO Collaborative since late in the year 2015. On April 19, 2016 he entered the building with the Tenant and just as they passed the Landlord's office where P.R. was talking with a landlord's employee in the office, an object was thrown towards the Tenant.

The witness stated that after the object was thrown P.R. came up towards him and the Tenant in an aggressive manner saying he was going to "send [tenant's name] to hell". The witness testified that he felt he was going to be assaulted by P.R. at that time. He said the Tenant turned his back to P.R. and put his hands on the wall which de-escalated the situation. The Witness said that as soon as the elevator opened they went inside and up to the Tenant's apartment where he immediately wrote down his statement while the Tenant called the police. A copy of that statement was submitted into evidence.

The witness submitted that he stopped volunteering after the April 19, 2016 incident for fear that P.R. or his associates would be able to recognize him. He stated he felt he could not be safe if he continued to volunteer and assist the Tenant at that location.

The evidence and arguments submitted by the Landlord are summarized as follows:

- The witness did not actually see P.R. throw the object at the Tenant;
- The issues brought forth in this application are res judicata because the time frame and evidence are the same facts decided upon in the April 11, 2016 Decision;
- The Tenant has submitted no evidence that the Landlord has failed to follow the required process as the Landlord did serve P.R. with a 1 Month Notice;
- The Tenant testified he would not testify against P.R., as recorded in the April 11, 2016 Decision;

- The Landlord argued “it is not my job to beg anyone to testify” against P.R. He said he had asked another tenant, K.W., to testify at the May 25, 2016 hearing and he said no.
- The Landlord confirmed he made no attempts to contact the Tenant’s Advocate regarding the May 25, 2016 hearing and argued she had no direct knowledge of the events;
- The Landlord stated “P.R. does not work for the Landlord” and argued P.R. was “not an employee”;
- The Landlord later testified the Landlord pays P.R. when P.R. takes out the trash or mops the floor for the Landlord and continued to argue P.R. was not an employee of the Landlord;
- The Landlord denied that they were in breach of the *Act* and argued this matter goes to credibility;
- The Landlord asserted the dates provided in the submissions of the witness were inconsistent with the Tenant’s written submissions as the Witness testified the threatening statement from P.R. occurred on April 19, 2016; however, the June 10, 2016 letter signed by the Tenant (page 42) indicated P.R. threatened him on May 10, 2016.

The Tenant disputed the Landlord’s submissions and argued the Landlord had no proof the Tenant refused to testify at the May 25, 2016 hearing. Although the Landlord pointed to the April 11, 2016 Decision as his proof; the Tenant argued he was never asked to testify and noted that the April 11, 2016 Decision clearly states it was the Landlord who said the Tenant told him he would not testify against P.R. That was not the Tenant’s testimony.

The Tenant reiterated that P.R. had threatened the Tenant twice since the April 11, 2016 hearing. Those additional threats occurred on April 19, 2016 when the police attended and a second time in the elevator on May 10, 2016 in front of other tenants as described in his June 10, 2016 letter.

In his written submission the Tenant requested the following:

- The Landlord be ordered to comply with section 28 of the *Act* and uphold the Tenant’s right to quiet enjoyment;
- An order granting the Tenant a rent abatement of \$325.00 per month until the Landlord takes action to resolve the problem; and
- The Residential Tenancy Branch (RTB) initiate an investigation at the [rental building name] related to this issue and consider “administration penalties”.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

Regarding the Tenant's written submission where he requested a rent abatement

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee or fee waiver application prescribed in the regulations.

The *Residential Tenancy Branch Rules of Procedure # 4.1* provides that the applicant may amend the application without consent if the dispute resolution proceeding has not yet commenced. The applicant **must** submit an amended application to the Residential Tenancy Branch and serve the respondent with copies of the amended application [emphasis added].

In this case the Tenant filed his application for Dispute Resolution seeking only an Order for the Landlord to comply with the *Act*, Regulation, or tenancy agreement. The Tenant made no mention in his comments that he wrote in the Details of the Dispute that he was seeking monetary compensation or rent abatement. Furthermore, the Tenant did not file an amended application to add those requests. The Tenant simply listed the additional requests for rent abatement in their written submission submitted as evidence. Therefore, I declined to consider the Tenant's request for rent abatement as it was not included in the full particulars of the dispute that was the subject of these dispute resolution proceedings, pursuant to section 59 of the *Act*.

As no findings of fact or law have been made with respect to a request for monetary compensation or rent abatement in relation to this application, the Tenant is granted leave to file another application for monetary compensation if he chooses to pursue those requests.

Regarding the Tenant's request for an Investigation and/or Administrative Penalties

An investigation and or consideration for administrative penalties pursuant to section 94.1 of the *Act* may only be brought forth or approved by the Director. Therefore, if the Tenant wishes to proceed with their request for administrative penalties against the Landlord, the Tenant is at liberty to submit their request for an investigation to the Director of the RTB.

Regarding the Tenant's request for an Order to have the Landlord comply with Section 28 of the Act

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

Section 62(3) of the *Act* stipulates that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

While I accept the Landlord's submission that res judicata is a doctrine that prevents rehearing of claims and issues arising from the same cause of action between the same parties after a final judgment was previously issued on the merits of the case, I do not accept the Landlord's argument, nor do I find, that the matters currently before me were the exact same cause of action that was before the Arbitrator on April 11, 2016. I make that finding, in part, as the evidence before me included events which occurred on April 19, 2016, May 10, 2016, and May 25, 2016; all of which occurred after the April 11, 2016 hearing. Therefore, pursuant to section 62(2) of the *Act*, I find the matters before me do not constitute res judicata.

I favored the Tenant's submissions over the Landlord's submissions regarding the events which occurred prior to this July 18, 2016 hearing. I favored the Tenant's submissions as they were forthright, credible, consistent, and supported by witness testimony and a witness's written submission.

I favored the Tenant's submissions over the Landlord's as I found the Landlord's oral submissions to be inconsistent. The Landlord argued that the April 11, 2016 Decision indicated the Tenant testified that the Tenant would not testify against P.R., when in fact the Decision submitted into evidence by the Landlord, stated the Landlord was the person who testified the Tenant refused to testify.

Notwithstanding the Landlord's attempt to discredit the Tenant's and Witness's oral testimony, I found there was clear evidence to support the Tenant's submissions that there had been two incidents since the April 11, 2016 hearing when P.R. had threatened the Tenant. One occurred on April 19, 2016 in the presence of the witness who attended this hearing and the second occurred on May 10, 2016 in the presence of other tenants.

In addition, I find the events as described by the Tenant, the Advocate and the Tenant's witnesses, which occurred April 19, 2016 and May 10, 2016 involving the tenant P.R.,

standing on their own, constituted a significant interference and disturbance to the Tenant and a breach of the Tenant's right to quiet enjoyment.

I do not accept the Landlord's submission that it is not his job to try and arrange for witnesses to testify in support of their application to evict a tenant who is disrupting the quiet enjoyment of another tenant. While the corporate Landlord may not have assigned that duty specifically to the Agent who attended this hearing, the burden most certainly lies with a landlord to prove the merits of a notice to end tenancy.

Furthermore, I conclude the Landlord provided contradictory testimony regarding P.R.'s association with the Landlord. While I accept P.R. may not be registered as an employee on the Landlord's payroll, by his own submissions the Landlord confirmed P.R. is paid by the Landlord to perform casual labor such as taking out the garbage or cleaning up the hallway. Casual labor is a form of paid employment or work; therefore, it is reasonable to conclude that P.R. works for the Landlord.

I concur with the Tenant's submissions that he has taken reasonable steps to mitigate his loss of quiet enjoyment by: filing complaints with the Landlord; securing an advocate to assist him; initiate meetings and follow up with the Landlord; collect witness statements; have a witness appear at this hearing; submit extensive evidence to support the Landlord's eviction of P.R.; and file this second application when they found out P.R.'s eviction was withdrawn. I further accept the Tenant could not accept the Landlord's offer to relocate to another rental unit given his current medical condition.

I find it presumptuously suspicious that P.R. had not been asked to relocate; the Landlord's staff had full knowledge of the April 19, 2016 events which involved the police yet the Landlord failed to follow through with evicting P.R.; and the Landlord continued to pay P.R. to perform work duties in the rental building.

In consideration of the nature of the April 19, 2016 threatening event, and the fact that the police were involved and the Landlord's office staff had full knowledge of that event, I find the Landlord was negligent in not proceeding with the eviction of P.R. in the May 25, 2016 hearing. I accept that the Landlord's aforementioned negligence has caused the Tenant a significant loss of quiet enjoyment. As such, I grant the Tenant's application and Order the Landlord to comply with section 28 of the *Act* and provide the Tenant with quiet enjoyment forthwith.

As indicated above, I grant the Tenant leave to file another application to seek monetary compensation for loss of quiet enjoyment, until such time as he is in receipt of quite enjoyment.

In addition to monetary compensation for loss of quiet enjoyment, Policy Guideline # 6 provides that an arbitrator may award aggravated damages where a serious situation has occurred or been allowed to occur. Aggravated damages are damages which are intended to provide compensation to the applicant rather than punishing the erring



party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

Based on the totality of the evidence before me, I find the Landlord has allowed the situation of the Tenant's loss of quiet enjoyment to continue to occur. That loss of quiet enjoyment occurs when the Tenant is in his own room having to listen to the P.R. banging on his pails during all hours of the day and night as well as having to endure the intimidating and threatening behaviour of P.R. towards the Tenant when the Tenant is in the common areas of the building and elevator. I have determined the Tenant has suffered distress and humiliation for and continuing during the four months between April and July 2016 Accordingly, I award the Tenant aggravated damages comprised of \$300.00 per month for a total amount of **\$1,200.00**, pursuant to sections 62 and 67 of the *Act*.

In consideration of previous awards granted to the Tenant which resulted in reduced rent; I hereby order, pursuant to section 62 of the *Act*, the Landlord to pay the \$1,200.00 monetary award to the Tenant forthwith, in one lump sum payment, and not deduct the amount from future rent.

In the event the Landlord does not comply with the above Order, the Tenant has been issued a Monetary Order for **\$1,200.00**. This Order must be served upon the Landlord and may be enforced through Small Claims Court.

### Conclusion

The Tenant was successful with his application; the Tenant was award \$1,200.00 aggravated damages and leave to reapply for monetary compensation for loss of quiet enjoyment. The Landlord was ordered to provide the Tenant quite enjoyment in accordance with section 28 of the *Act*.

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: July 25, 2016

---

Residential Tenancy Branch