



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, AAT, RR, OPR, MNR, FF

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant applied on July 5, 2016 for:

1. A Monetary Order for compensation - Section 67;
2. An Order allowing access to the unit for the Tenant or the Tenant's guests - Section 70;
3. An Order for a rent reduction - Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on July 15, 2016 for:

1. An Order of Possession - Section 55;
2. An Order for unpaid rent or utilities - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Parties confirmed that the tenancy has ended and that the Landlord has possession of the unit. As such I dismiss the Landlord's claim for an order of

possession. As access to the unit and a rent reduction are only matters that are relevant to an ongoing tenancy I dismiss these claims of the Tenant.

At a point during the hearing the Landlord asked for an adjournment. The Landlord stated that she was in and out throughout the tenancy and that Landlord SR mainly dealt with the Tenant. The Landlord stated that for these reasons it may seem like she is giving conflicting evidence about the tenancy. The Landlord stated that Landlord SR could not attend this hearing as he is currently out of the country. When asked to clarify the period of time or times that the Landlord was out of the country the Landlord stated that she was out of the country between June 21 and July 13, 2016.

Rule 6.4 of the Residential Tenancy Branch Rules of Procedure provides that when considering whether to grant an adjournment an arbitrator must consider, inter alia, the degree to which the need for an adjournment arises out of neglect of the party seeking the adjournment. It should be noted that the Landlord's request for an adjournment came while the Landlord was providing contradictory evidence and not at the outset of the hearing. Considering the timing of the request and as there was no evidence of an emergency that prevented Landlord SR from attending or that prevented Landlord SR from providing written submissions in response to the Tenant's application, and I note that the Landlord provided no documentary submissions at all in relation to the Tenant's claims, I denied the request for the adjournment.

#### Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Tenant entitled to the monetary amounts claimed?

#### Background and Evidence

A written tenancy agreement was entered into between the Parties. The tenancy started on October 1, 2015. Rent of \$950.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$475.00 as a security deposit. The tenancy agreement provides that water, heat and electricity are included in the rent.

The Tenant provided a copy of a one month notice to end tenancy for cause dated June 24, 2016 issued by the Landlord and it is noted that the Tenant did not dispute this notice. The Tenant states that he moved all of his belongings out of the unit on July 31, 2016 and returned the key to the Landlord on August 1, 2016. The Landlord states that the Tenant did not move out of the unit until about August 9, 2016 and that no keys were returned. The Landlord also states that the Tenant moved his belongings out on either August 2 or 3, 2016, that items were left behind, and that the Tenant was in and out of the unit thereafter.

The Parties agree that no rent was paid for July 2016. The Landlord states that sometime in the evening of July 4, 2016 Landlord SR served the Tenant in person with a 10 day notice to end tenancy for unpaid rent. The Tenant states that no such notice was served on the Tenant at any time. The Landlord claims \$975.00 as unpaid rent. It is noted that the Landlord's application includes as evidence a signed and witnessed proof of service indicating that the Landlord in attendance at this hearing served the 10 day notice at 10:00 a.m. on July 4, 2016.

The Parties agree that starting either December 2015 or January 2016 the Landlord collected an extra \$50.00 per month with the rent. The Tenant states that the Landlord told the Tenant that this was a rent increase and that the Landlord did not provide any notice of rent increase on the approved form. The Tenant claims return of the additional rent paid in the amount of \$250.00. The Landlord states that this amount was collected to offset the utility usage of the Tenant.

The Tenant states that the Landlord never provided any heat to the unit for the duration of the tenancy and that despite repeatedly asking for heat the Landlord refused and told the Tenant to wear more clothes. The Tenant states that the unit was very cold over the winter months in particular and that the Tenant had to turn on the stove to heat the unit. The Tenant states that the Landlord had the master control for the heat, that the Tenant could not increase the heat and that its thermostat did not work. The Tenant claims

\$500.00 per month for a total claim of \$4,500.00. The Landlord denies that the heat was ever turned off and states that the heat was maintained throughout the tenancy at 18 or 19 degrees Celsius. The Landlord states that the Tenant had its own thermostat and could adjust the heat. The Landlord states that the unit was cold because the Tenant and his guests were coming and going all the time and would leave the doors and windows open. It is noted that one of the reasons noted on the notice to end tenancy for cause dated June 24, 2016 is that the stove was being left on.

The Tenant states that the Landlord did not allow the Tenant to have guests and that when the Tenant did have guests the Landlord would tell them to leave or would ask them for identification and check cars parked on the street. The Tenant states that this behavior started at the onset of the tenancy and that whenever a visitor would come the Landlord would come down to the unit, knock on the door and ask the guest to leave by 10:00 p.m. The Tenant states that the Landlord would also interrogate his friends about their identity. The Tenant states that this occurred every time he had a guest and that he had guests about once or twice a week. The Tenant submits that this caused him humiliation and distress. The Tenant claims \$4,500.00.

The Landlord states that this is partially correct. The Landlord states that from move-in the Tenant would have visitors come after midnight playing loud music and smoking. The Landlord agrees that the Tenant was told that he could not have any guests after 10:00 p.m. The Landlord denies asking for any identification from guests. The Landlord states that his friends would have 2 to 4 cars parked on the street and the neighbours complained. The Landlord thinks she waited until after Christmas to restrict the guests. The Landlord states that her husband told her that the Tenant was smoking marihuana.

The Tenant states that he was provided use of the entire backyard, including the barbeque from the onset of the tenancy. The Tenant states that he requested this usage due to his job in construction and that the Landlord had agreed giving the Tenant a key to access the back yard. The Tenant states that in mid-July 2016 the Landlord removed 7 boxes of laminate flooring from under the gazebo and put them in the rain on

the lawn. The Tenant states that the Landlord should have at least given the Tenant notice and opportunity to move the laminate before moving the materials themselves. The Tenant states that being out in the rain immediately ruined the laminate. The Tenant states that he purchased the materials from a flooring store but did not provide the receipt as evidence of the amount paid. The Tenant claims compensation of \$500.00.

The Landlord states that the Tenant was not given any permission to use the gazebo as storage. The Landlord states that the Tenant was putting materials in the gazebo preventing walking in the area. The Landlord states that she placed the boxes under the picnic table outside the gazebo. The Landlord states that the Tenant was given a letter in March 2016 telling him to remove the articles because of a fire hazard. The Landlord states that the Tenant was also given notice to remove the materials on the 10 day notice to end tenancy dated July 4, 2016. The Landlord states that the key to the back yard was provided only for the placement of the Tenant's garbage and use of the barbeque. It is noted that the 10 day notice includes a notation to the tenant to "clear all your belongings from the back yard..."

The Tenant states that the Landlord cut off the electricity to part of the unit on June 25, 2016 and on July 2, 2016 cut off electricity to all the remaining rooms except the bedrooms. The Tenant states that the police were called on this date, noted the lack of electricity to the unit and spoke to the Landlord about this. The Tenant states that the electricity was not returned until July 22 or 23, 2016. The Tenant claims \$500.00 for this loss. The Landlord agrees that the unit was partially without electricity as the Tenant had caused a power surge by leaving all his lights on. The Landlord states that the Tenant was only without electricity for a day or two before it was restored. The Landlord states that the police did come to them on July 2, 2016 and told the Landlord to turn the electricity on.

The Tenant states that the Landlord harassed the Tenant and his guests by repeatedly calling the city parking enforcement to give them parking tickets. The Tenant states that

a city representative spoke to the Landlord to stop calling them to ticket the Tenant as there is no fine for resident parking. The Tenant provides copies of parking tickets and a letter from the city setting out the parking bylaw. The Tenant claims \$750.00.

The Tenant states that when he washed his clothes in his sink and left them outside to dry the Landlord would tell the Tenant that he is not allowed to wash his laundry in the unit. The Tenant states that the Landlord asked him who was going to pay for the water usage. The Tenant states that after this occurred a few times the Tenant stopped washing his clothes in the sink. The Tenant states that this was very inconvenient as he was so busy working all day. The Landlord states that this is "true in context" and that the Tenant would hang his clothes on the outside table causing drips on the laminate. The Landlord states that she only told the Tenant not to put his clothes on the table.

The Tenant states that the Landlord entered the unit on or about July 1, 2016 without notice or permission. The Tenant states that the Landlord entered by pushing his friend out of the ways and then took the only key that the Tenant had for the unit. The Tenant states that this incident was reported to the police who told the Tenant to change the locks. The Tenant was not present for this incident and states that his friend did not want to be involved as a witness. The Tenant states that a month prior to this occurrence the Landlord informed the Tenant that the Landlord had entered and taken photos of the unit. The Tenant claims \$500.00 and \$25.00 for a new lock. No invoice is provided for the lock. The Landlord states that the incident on July 1, 2016 could not have happened as the Landlord was out of country at the time. The Landlord states that she may be confused about the dates. The Landlord states that on July 2, 2016 she went to the door, was invited inside and that she was given the key when she asked for it. The Landlord states that no key was actually taken and that the Landlord had given the Tenant that key on June 23, 2016 to give to another tenant.

The Tenant states that the Landlord's behavior over the duration of the tenancy caused the Tenant stress and anxiety, a loss of sleep and headaches. The Tenant claims a further \$4,500.00 for his loss of quiet enjoyment. The Landlord states that she never

went to the Tenant's door to ask for rent but that "yes, maybe in the evenings" because the Tenant left the door and windows open and the guy who was in the unit did not speak English.

The Tenant claims gas, parking, and mail cost and lost work income.

### Analysis

Section 43 of the Act provides that a landlord may impose a rent increase only up to the amount, inter alia, calculated in accordance with the regulations and that if a landlord collects a rent increase that does not comply, the tenant may recover the increase. The allowable rent increase for 2016 is 2.9%.

Based on the undisputed evidence that from at least January 2016 the Landlord collected an extra \$50.00 each month along with the rent, and considering the undisputed evidence that the tenancy agreement provides for heat and electricity, I accept that the \$50.00 collected by the Landlord was an extra rental amount. In addition to this amount being collected without proper notice or form, as the rent increase is greater than allowed under the Act I find that the Tenant is entitled to the amount claimed of **\$250.00**.

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results.

The tenancy provides that heat is included with the rent paid. While I consider a temperature of 18 degrees Celsius to be insufficient for a basement unit in particular during the winter months, considering the Landlord's own evidence that the Tenant was keeping the oven on, I accept the Tenant's evidence that there was no heat to the unit. I find therefore that the Tenant has substantiated that the Landlord breached the tenancy agreement to provide heat. While the Tenant is entitled to compensation I consider the amount being claimed in relation to the amount of rent paid to be

excessive. Further there would reasonably be negligible loss of heat, if any, to the Tenant during the summer months. I find therefore that the Tenant is only entitled to proportional amount of \$100.00 per month for a 6 month period for a total amount of **\$600.00**

The Landlord provided no supporting evidence to corroborate a temporary electrical problem and I note that the Tenant's evidence is preferred overall due to the Landlord's overall lack of credibility. As a result I find that the Tenant was without electricity for all or a portion of the unit over one month. However given the Tenant's evidence of being mostly out of the unit at work and no evidence as to loss in relation to cooking or use of appliances, I find that the Tenant is claiming an excessive amount and I find that the Tenant has only substantiated a nominal entitlement of **\$100.00**.

Whether or not the Tenant was given permission to store belongings in the gazebo, I accept the Tenant's more credible evidence that the Tenant was given full use of the back yard from the onset of the tenancy. As such and at a minimum the Landlord carried a duty to not damage the Tenant's items that might be in the back yard. Given the conflicting evidence in relation to the service of the 10 day notice I accept that the Tenant was not given any such notice with a request to remove the laminate from the gazebo. Given the lack of any other documentary evidence to support that the Tenant was given any warning about the removal of the laminate I find that the Landlord acted negligently and in a highhanded manner in removing the laminate. I also accept that the Landlord set the laminate on the lawn and not in any protected area and that the laminate was immediately destroyed by rain causing the Tenant a loss. However as the Tenant did not provide any invoice, or other evidence to support the amount claimed I find that the Tenant has only substantiated a nominal amount of **\$200.00**.

Section 28 of the Act provides that 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.

I accept the Tenant's credible and supported evidence that the Landlord repeatedly called the city to give the Tenant tickets. I do consider this to be a disturbance and while the matter of the tickets themselves cannot be compensated as these must be dealt with in another forum, I do consider this behavior by the Landlord as at minimum evidence supporting a loss of quiet enjoyment by the Tenant. For this reason I find that the Tenant is entitled to a nominal amount of **\$200.00** for the disturbance and I dismiss the Tenant's claim for the remaining amount.

Given the Landlord's contextual agreement to the Tenant's evidence of washing his clothes, and considering overall the Tenant's more credible version of events, I accept that the Landlord restricted the Tenant's ability to hand wash his clothes in the unit. I find this to be extraordinarily intrusive behavior by the Landlord. In noting that the Tenant was paying for his use of water with his rent and considering that there is no evidence of any negligent use of water by the Tenant I find that the Tenant has substantiated that the Landlord breached the Tenant's right to quiet enjoyment of the unit. As I find the amount claimed to be excessive however I find that the Tenant has only substantiated a nominal amount of **\$200.00**.

Given the conflicting evidence given by the Landlord in relation to the incident involving the Landlord's entry into the unit on or about July 1, 2016 I prefer the Tenant's evidence and find that the Tenant has substantiated that the Landlord entered his unit without right on at least one occasion. Given the highly disturbing nature of this breach of quiet enjoyment, I find that the Tenant has substantiated a nominal amount of **\$200.00**.

Although I accept that the Tenant paid for a new lock given the lack of invoice I find that the Tenant has not substantiated the amount claimed and I dismiss this claim.

Section 30 of the Act provides that a landlord must not unreasonably restrict access to residential property by a person permitted on the residential property by that tenant. Given the Landlord's own evidence that guests were restricted after 10:00 p.m. and considering my overall preference for the Tenant's more credible evidence I accept that the Landlord unreasonably restricted the Tenant from having guests on several occasions over the length of the tenancy without any reasonable basis. Further, I accept that the Landlord interrogated the Tenant's friends and did ask for identification. I find this to be a highly intrusive breach of the Tenant's rights to quiet enjoyment and would reasonably result in humiliation. As a result I find that the Tenant has substantiated an entitlement to compensation. However, in considering the amount being claimed as excessive in relation to the rent paid I find that the Tenant has only substantiated compensation of **\$500.00** based on a nominal amount of \$50.00 for each month of the 10 month tenancy.

As the Tenant has provided no medical or psychological reports to support his claims for stress, anxiety or loss of sleep and considering that the Tenant has been compensated for breach of quiet enjoyment in relation to separate claims set out above, I find that the Tenant is not entitled to any further compensation for the loss of quiet enjoyment.

As costs to participate in the proceedings, other than the filing fees, are not provided for under the Act I dismiss the Tenant's claim for his costs for his time, gas, mail and parking. As the Tenant's application has met with success I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,350.00**.

Based on the undisputed evidence that no rent was paid for July 2016 and given the rent amount provided in the tenancy agreement I find that the Landlord is entitled to unpaid rent of **\$950.00**. Given the discrepancy with the service of the 10 day notice and

my finding that no such notice was served to the Tenant to support the Landlord's application for an order of possession I decline to award the Landlord with recovery of its filing fee. Deducting this amount from the Tenant's entitlement of **\$2,250.00** leaves **\$1,400.00** owed by the Landlord to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$1,400.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: August 19, 2016

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Residential Tenancy Branch

