



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Immeubles Natalie Inc  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OLC, AAT, FF

### Introduction

This is an application brought by the tenant requesting a monetary order in the amount of \$25,000.00, requesting an order for the landlord to comply with the act, requesting an order to allow access to the unit for the tenant's guests, and requesting recovery of the filing fee.

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

### Issue(s) to be Decided

At the beginning of the conference call the tenant testified that the landlord has now complied with the Act and has allowed access to the rental unit by her daughter, and therefore those portions of the application are no longer required.

The issue I dealt with therefore is whether or not to issue a monetary order against the landlords, and if so in what amount.

### Background and Evidence

The parties agree that this tenancy began on July 1, 2013, and that the present monthly rent is \$998.00.

The tenant testified that, it is her belief, that the landlord should be fined \$25,000.00 due to the numerous notices to end tenancy that have been issued by the landlord and the numerous caution letters issued by the landlord.

The tenant further testified that she believes these ongoing notifications along with the frequent "surveillance" of her daughter to be in unreasonable breach of her quiet enjoyment of the rental property, and that this breach of her quiet enjoyment has caused her significant stress.

The tenant further testified that, it is her belief, that the only way to stop the breach of her quiet enjoyment is for the landlord's to be fined a significant amount of money, and that is why she is requesting that a \$25,000.00 fine be issued against the landlords.

Legal counsel for the landlord stated that they do not dispute that there have been numerous notices to end tenancy issued against the tenant, however in all cases the landlord had the lawful right, under the Residential Tenancy Act, to issue those notices.

Legal counsel for the landlord also stated that they do not dispute that the tenant has received numerous caution letters, however again under the Residential Tenancy Act the landlord has the lawful right to issue caution letters, if they believe the tenant is breaching the terms of the tenancy agreement or the Residential Tenancy Act, and in all cases the landlords honestly believed that was the case.

Legal counsel for the landlord also stated that they do not dispute that, for a period of time, the tenant's daughter was under observation, as, at the time, the tenancy agreement that was in place stated that a tenant could only have a visitor stay for a maximum of 14 days, and therefore the daughter was under observation to ensure that the tenant was not breaching that condition of the tenancy agreement. That clause of the tenancy agreement was subsequently found, in a previous arbitration, to be unconscionable and therefore unenforceable. As stated at the beginning of this hearing however, the issue of access by the daughter has now been resolved and she is now an occupant of the rental unit. The landlord however was always of the belief that they were acting to enforce their rights under the tenancy agreement and the Residential Tenancy Act.

Legal counsel for the landlord also stated that the relationship between the landlord and this tenant has been an uncomfortable relationship; however it has not all been one-

sided and they fail to see how any stress allegedly suffered by the tenant can be blamed on the landlords as the landlords have only been attempting to enforce their rights under the Residential Tenancy Act.

### Analysis

First of all I want to make it clear that although the tenant stated she had three witnesses present, I did not take testimony from those witnesses because when I asked the tenant what her witnesses would be testifying to, she stated they would be speaking to the "surveillance" of her daughter and the numerous warning letters she has received, and the stress this has caused. Since the landlord has not denied having the tenants daughter under observation, nor has the landlord denied issuing numerous warning letters and notices to end tenancy it was my finding that the witness testimony was not necessary.

The tenant alleges that the landlords frequent notices to end tenancy and caution letters, are a breach of the tenants right to "quiet enjoyment". A very similar case was dealt with in the Supreme Court case of *Whiffin v. Glass & Glass* (July 26, 1996) *Vancouver Registry No. F882525 (BCSC)*, in which case it was held that attempts by a landlord to end a tenancy, if he believes he has grounds, do not constitute a breach of the covenant of quiet enjoyment of the premises. That case is the authority over this issue, and states that, as long as the landlord believes he has reason to end the tenancy, he can make that assertion "frequently, emphatically and even rudely" and that a landlord is entitled to threaten proceedings in the courts for possession, even if the landlord is wrong. The tenants remedy is to dispute the notice ending the tenancy once given.

In the case before me, it is my finding that the landlords believed that they had reasonable grounds for issuing warning letters and notices to end the tenancy, and therefore they were acting within their rights under the Residential Tenancy Act.

Therefore it is my decision the tenant has not met the burden of proving that there was a breach of the covenant of quiet enjoyment of the premises.

It is obvious that the relationship between this tenant and the landlords has not been a comfortable relationship, however as stated above the landlords had the right, under the Residential Tenancy Act, to try and enforce, what they believe to be, their rights, as did the tenant have the right to dispute the landlords claims through arbitration, and although the tenant may have found this process stressful, the landlord cannot be

penalized for attempting to enforce their rights, even if the landlords are subsequently found to be incorrect.

Further, the Residential Tenancy Act does not give an arbitrator the authority to issue a fine, which is what the tenant stated she is requesting in this case.

### Conclusion

Therefore pursuant to section 62 of the Residential Tenancy Act this application is dismissed in full without leave to reapply.

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 14, 2016

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Residential Tenancy Branch