



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, MNSD, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for a monetary order for return of all or part of the pet damage deposit or security deposit; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first date scheduled, was adjourned by consent and my Interim Decision was provided to the parties.

The landlord and both tenants attended the hearing on the first scheduled date, and on the second scheduled date the landlord and one of the tenants attended. The landlord advised on the first hearing date that he had not received the tenants' evidentiary material, and one of the tenants advised that all evidentiary material was provided to the landlord by placing the documents and electronic evidence in the landlord's mailbox at the landlord's home. My Interim Decision ordered, by consent, that the tenants re-serve the material, and if done so by registered mail, the tenants were ordered to provide proof of that service. The tenants have provided a Canada Post cash register receipt and Registered Domestic Customer Receipt. I am satisfied that the tenants served the evidence as ordered.

No further issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties agreed that the tenants have moved out of the rental unit and the landlords have returned to the tenants the security deposit in full. Therefore, the tenants' applications for an order cancelling the notice to end the tenancy for cause and for a monetary order for recovery of the security deposit are withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit?
- Should the tenants recover the filing fee from the landlord?

Background and Evidence

**The tenant** testified that this month-to-month tenancy began on September 1, 2016 and ended on September 30, 2016. Rent in the amount of \$550.00 per month including utilities was payable on the 1<sup>st</sup> day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$275.00 which was returned in full to the tenants. The rental unit is a basement suite and the landlord resides in the upper level of the home with his family. A copy of the tenancy agreement has been provided.

The tenant further testified that she and her brother lived in the rental unit alone, and there was no room for additional occupants.

The tenants had guests who visited about twice a week, and the landlord's mother who resides in the upper level of the home with the landlord kept track of what time the tenants' guests would come and go. The tenant has 2 jobs and goes to school. It caused the tenant stress and she was not able to concentrate on anything else, being afraid of being stalked. The landlord's mother knew everything about the tenants' guests. Instead of talking to the tenants, the landlord's mother talked to the tenants' guests, which is not acceptable behavior by a landlord. That's why the tenants moved out so soon. The tenants found a place, which was difficult and very painful for the tenant to do so by herself.

The tenant also testified that the Affidavit provided by the landlord includes a statement saying that the tenant threatened him, but there was no threat. The tenants have provided a USB digital evidence and a transcript, including conversations recorded to prove there was no threat. The recording was made on September 17, 2016.

The tenant was very upset and has a medical condition. The tenants found a place and moved.

The tenants claim \$550.00 for loss of quiet enjoyment of the rental unit.

**The landlord** testified that the notice to end the tenancy was issued to the tenants because they jeopardized the landlord by knocking on the door at night, then called the police. The tenants' guests argued with the landlord's mother, and one certain guest was there a lot. The landlord is not sure whether or not the guest lived there. However, the guests blocked the landlord's driveway just about every day, and the landlord called to tell the guest not to park there, and told the tenants many times.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated September 17, 2016 and contains an effective date of vacancy of November 1, 2016. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Tenant has engaged in illegal activity that has, or is likely to:
  - jeopardize a lawful right or interest of another occupant or the landlord.

The landlord also testified that the tenants left the rental unit dirty and with food that had boiled over on the stove. The landlord wanted to just end the tenancy and this dispute so the security deposit was returned. The landlord has not re-rented the rental unit.

The landlord also argued that it's illegal to record conversations without permission because the landlord was not told prior to the recording.

### Analysis

Under the *Residential Tenancy Act* a tenant is entitled to quiet enjoyment of a rental unit, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Where a tenant makes an application for damages caused by such a breach by the landlord, the onus is on the tenant to establish the claim. The *Act* does not permit monetary claims to punish a landlord for a wrong doing, and I refer to Residential Tenancy Policy Guideline #16 – Compensation for Damage or Loss, which states, in part:

#### A. COMPENSATION

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the *Act*, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

The tenant testified that guests were questioned and bothered by the landlord's mother consistently, and the landlord didn't dispute that. The landlord merely testified that the tenants or their guests parked where they ought not to have parked, and the tenants or their guests were knocking on the landlord's door so the notice to end the tenancy was issued. Reviewing the written submissions provided by the parties as evidence, I am satisfied that there were words exchanged between the parties. However the tenant disagrees that the landlord's Affidavit is correct in describing what happened. The landlord disagrees that the audio recording provided by the tenants to establish that the landlord's Affidavit is incorrect, should be considered. I have not heard the recording, but I have read the transcript, which appears to be in broken English. In my opinion, it indicates that parties, including friends of the tenants or the landlord, had a conversation about issues to do with the tenancy and lack of quiet enjoyment. No where does it show that the tenants exhibited any disrespect, but instead tried to resolve the dispute.

I found the tenant to be sincere in her testimony, and considering the testimony of both parties, I am satisfied that the landlord has failed to comply with the *Act* by preventing the landlord's mother from interfering with the tenants' right to quiet enjoyment.

The tenant testified that it upset her greatly and affected her schooling. This was a very short tenancy, lasting only a month. Considering the Policy Guideline above, "...The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred," and having found that the landlord has breached the *Act*, I find that the tenants have established a claim for moving expenses, which is generally deemed to be the equivalent of 1 month's rent.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the tenants' application for an order cancelling a notice to end the tenancy for cause is hereby dismissed as withdrawn.

The tenants' application for a monetary order for return of the security deposit is hereby dismissed as withdrawn.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$650.00.

This order is final and binding and may be enforced.

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 29, 2016

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Residential Tenancy Branch