



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, PSF, RP, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 32; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not participate in the conference call hearing, which lasted approximately 30 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that on November 10, 2016 she forwarded the tenant's application and supporting documents for the dispute resolution hearing via registered mail to the landlord. The tenant provided a Canada Post receipt and tracking number as proof of service. Based on the testimony of the tenant and in accordance with sections 89 and 90 of the *Act*, I find that the landlord has been deemed served with the application and supporting documents on November 15, 2016, the fifth day after it's registered mailing.

### Preliminary Issue – Late Evidence

The tenant testified that on December 9, 2016 she faxed a subsequent three page evidence package to the landlord. Based on the testimony of the tenant and in

accordance with sections 88 and 90 of the *Act*, I find that the landlord has been deemed served with the three page evidence package on December 12, 2016, the third day after it was faxed.

The Residential Tenancy Branch Rules of Procedure 3.14 establishes that evidence intended to be relied on at the hearing must be received by the respondent and the Branch not less than 14 days before the hearing. I find the landlord was not served in accordance with the Rules of Procedure stated above and for this reason; I have not relied on this three page evidence package to form any part of my decision.

#### Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

Is the tenant entitled to an order to the landlord to make repairs to the rental unit?

Is the tenant authorized to recover the filing fee for this application from the landlord?

#### Background and Evidence

As per the testimony of the tenant, the tenancy began on September 15, 2013 on a fixed term until September 30, 2014 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$1,734.90 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$825.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant received a 1 Month Notice to End Tenancy for Cause ("1 Month Notice") dated August 31, 2016 and a 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") dated October 27, 2016. The validity of each notice was addressed in a previous decision issued by the Residential Tenancy Branch on December 21, 2016. Both notices were set aside. For ease of reference, the file number for this hearing is set out on the front page of this decision.

### Quiet Enjoyment

It is the tenant's position that the landlord has repeatedly breached her right to quiet enjoyment through the following actions;

1. invasion of privacy
2. harassment and stalking
3. repeated deactivation of her FOBS, contravention of sections 30 and 31 of *Act*
4. entering the rental unit without proper notice
5. persistent and disturbing contacts on cell phone
6. two barely credible notices to end tenancy

In an effort to support her claim, the tenant has provided copies of emails, text messages and letters.

For the actions listed above, the tenant seeks compensation equivalent to two months' rent, specifically in the amount of \$3,469.80. The tenant testified that these actions have caused her considerable anxiety, stress and severe emotional distress.

### Breach of Tenancy Agreement

The tenant testified that despite her tenancy agreement which stipulates the use of a bike locker, the landlord has not provided a bike locker to date. The tenant seeks an order requiring the landlord to provide a bike locker.

### Repairs

The tenant seeks an order for the landlord to repair the toilet tank pump and dishwasher. The tenant testified that she had requested these repairs in writing on September 15, 2016.

### Analysis

#### Quiet Enjoyment

The tenant seeks \$3,469.80 in compensation for the continuous breach of her quiet enjoyment.

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include 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 and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

A breach of quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*. When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim.

To prove a loss, the applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Upon review of the evidence, I am satisfied that any actions taken by the landlord that the tenant has construed as an invasion of privacy, harassment and stalking are the result of an ongoing investigation by the landlord to determine whether the tenant is subletting the rental unit. Although these actions may have disturbed the tenant, I find the landlord's actions were reasonable in the circumstance and do not infringe on the tenant's right to quiet enjoyment.

Based on the tenant's testimony, that she maintained access to the rental unit throughout the FOB deactivations, and that the landlord has reactivated three of her FOBs I find any inconvenience was temporary at best and therefore does not constitute a breach of quiet enjoyment.

The tenant presented evidence in relation to one incident in which the landlord entered the rental unit without proper notice. I find the tenant has provided insufficient evidence to establish a one-time isolated incident as described by her forms a breach of quiet enjoyment which warrants compensation.

The tenant has provided insufficient evidence to establish any calls made by the landlord were persistent or disturbing.

The tenant indicated that the two notices to end tenancy were issued in an attempt to put extra mental pressure on her. I find the tenant has provided insufficient evidence to establish the landlord's intent or the apparent mental pressure she endured. Further, I do not consider two notices to be a frequent and ongoing interference or an unreasonable disturbance. Under the *Act*, the landlord is at liberty to issue notices to end tenancy.

Individually or combined, the actions presented by the tenant do not support a finding that the landlord has breached the tenant's right to quiet enjoyment. Accordingly, I dismiss the tenant's claim for compensation without leave to reapply.

#### *Breach of Tenancy Agreement*

Pursuant to the tenancy agreement and form K dated September 15, 2013, the tenant is entitled to bike storage. Based on the undisputed testimony of the tenant, I find the landlord has not provided this and therefore order the landlord to comply with the tenancy agreement and provide the tenant with bike storage.

#### *Repairs*

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Based on the tenant's undisputed testimony that the dishwasher and toilet tank pump require repair, I order the landlord to obtain a certified technician to inspect the dishwasher and toilet tank pump no later than February 3, 2017. If the certified technician determines that repairs are necessary, the landlord must have the repairs completed by a certified technician no later than February 24, 2017. Should the certified technician determine repairs are not necessary, written reasons must be

provided by the technician to the landlord who in turn will provide the reasons to the tenant.

As the tenant was not entirely successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The tenant's application for a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement is dismissed without leave to reapply.

I order the landlord to comply with the tenancy agreement and provide the tenant with bike storage.

I order the landlord to inspect the dishwasher and toilet tank pump no later than February 3, 2017. If the inspection reveals repairs are required the landlord must make the necessary repairs no later than February 24, 2017. The landlord must use a certified technician to conduct the inspection and any necessary repairs to the dishwasher and toilet tank pump.

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: January 20, 2017

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Residential Tenancy Branch