Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, OLC, MNDC, FF (Tenant's Application)
MNDC, FF (Landlord's Application)

Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution filed November 24, 2016, the Tenant sought:

1. monetary Compensation, in the amount of $10,820.00, including aggravated damages, for compensation for damage or loss under the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement;

2. an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement;

3. an Order suspending or setting conditions on the Landlord's right to enter the rental unit; and,

4. recovery of the filing fee.

In the Landlord's Application for Dispute Resolution, filed on December 13, 2016, the Landlord sought the following:

1. monetary Compensation in the amount of $5,200.00 for money owed or for compensation for damage or loss under the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement; and

2. recovery of the filing fee.

The hearing was conducted by teleconference on January 4, 2017, February 2, 2017, March 7, 2017 and March 20, 2017 occupying a total of 7.5 hours of hearing time.

Preliminary Matter—Naming of the Parties

The Tenant named the Landlord, M.V.N., on the application for Dispute Resolution. The Landlord noted on the Landlord's Application for Dispute Resolution was the Owner of the property, also with the initials M.V.N., who was not present at any of the hearings. At all material times, the Landlord's daughter, M.V.N., appeared on behalf of the owner (hereinafter referred to as "M.N.").

On the second day of the hearing, after being affirmed to testify, the Landlord's daughter and agent, M.N. confirmed that she is a lawyer, although she stated she was not appearing as legal counsel. She further stated she was not acting as agent for her mother, but as her "mother's daughter". She confirmed her mother signed the tenancy agreement as well as the move in condition inspection report.

When I informed M.N. that she had entered the rental unit pursuant to a Notice of Entry and that only a Landlord has such a right, she stated that "if agent is the proper term than I guess I am an agent".

M.N. further stated that during the hearing on August 24, 2016, she informed the Arbitrator that she was not the Landlord, but the Owner/Landlord's daughter. Notably, M.N. was personally noted as Landlord on the Arbitrator's Decision dated August 30, 2016.

I find, for the purposes of this matter, that M.N. acted as agent for M.V.N., the property owner and Landlord and I amend the Tenant's application, pursuant to section 64(3)(c) to correctly name the Landlord as M.V.N.

Similarly, I ament the Landlord's Application to remove the name of the occupant, R.D.

Preliminary Matter—Landlord's failure to attend March 7, 2017 and March 20, 2017 hearings

On February 27, 2017 the Landlord's agent sent a letter to the Executive Director and Director of Operations of the Residential Tenancy Branch seeking an adjournment. The letter reads as follows:

> "…Enclosed please find medical letter, we are not able to attend March 7-2017 hearings. Please generally adjourn them."
>
> [Reproduced as written]

Attached to the Landlord's Agent's February 27, 2017 letter was a letter dated February 23, 2017 from Dr. M.M. who writes:

> "Dear Residential Tenency Branch
>
> M. and M.V.N. are unable to attend a hearing on 7th March 2017 for medical reasons."
>
> [Reproduced as written]

On March 3, 2017 the Landlords sent a further letter to the Branch seeking an adjournment. The letter reads as follows:

"DO NOT PROCEED MARCH 7-2017

IN OUR ABSENCE

We advised we cannot attend on March 7-2017 and we requested adjournment. It has been twice adjourned for the Tenant. We provided the requested medical proof.

The doctor advised it is unethical to divulge private medical information.

We should not be force to divulge private medical information to the Tenant, who previously used such information to take advantage.

We are not able to attend. We do not have anyone else to attend in our stead. This is pressuring considerable and undue stress.

Proceedings should not be held in without us.

Please do not hold session without us."

[Reproduced as written]

The Landlord failed to provide any details as to the nature of the medical issues which they claim prevented them from attending the March 7, 2017 hearing, including the expected duration. Further, they did not attend the hearing on March 7, 2017, nor did they send someone in their stead to provide information as to an appropriate date for the hearing to recommence.

The Tenant, A.M., and fellow occupant of the rental unit, R.D., confirmed that the Landlords did not communicate with them regarding the requested adjournment.

A.M. further stated that they attended a further hearing on February 3, 2017 with the Landlord which convened as a result of the Tenant's application to cancel a 1 Month Notice to End Tenancy for Cause. By decision dated February 27, 2017 the Notice was cancelled. A.M. stated that he received the decision by email on February 27, 2017 and that shortly after receiving the Decision, the Landlord issued a 2 Month Notice to End Tenancy for Landlord's Use.

At the hearing on January 4, 2017, the parties were informed that I would request two hearing spots on the date the hearing was to reconvene to ensure the hearing would complete. I also informed the parties that I made this request to ensure their hearing would conclude on the date the hearing reconvened.

On March 20, 2017 the Landlords were represented by counsel, O.M. He indicated that he had been retained on March 18, 2017 and had received the Landlords' materials the day before the hearing: on March 19, 2017. The Landlords' counsel requested an adjournment. When I asked O.M. if he had any further information as to the medical issues which prevented their attendance

at the hearing on March 7, 2017 and March 20, 2017 hearings, he stated that he did not have any such information. I informed him that I was unable to consider his request for an adjournment without some indication as to the duration an impact of these alleged medical issues.

During the hearing on March 20, 2017, O.M. contacted M.N., to discuss a possible settlement. The hearing was paused to provide him the opportunity to speak with M.N. When he returned to the call, he stated that the medical issues which prevented M.N. from attending the hearing on March 7 and March 20, 2017 related to stress brought on by these proceedings. He also stated that M.N. would not be in attendance at a subsequent hearing on the issue of a 2 Month Notice to End Tenancy. He confirmed that he had no information as to why the M.V.N. was not at the hearings, and stated that he "guessed they were age related".

I denied the request for an adjournment. In doing so, I considered Rule 7.9 of the *Residential Tenancy Branch Rules of Procedure* which reads as follows:

> **7.9 Criteria for granting an adjournment**
>
> Without restricting the authority of the arbitrator to consider other factors, the arbitrator must apply the following criteria when considering a party's request for an adjournment of the dispute resolution proceeding:
>
> a) the oral or written submissions of the parties;
>
> b) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter in accordance with the objections set out in Rule 1 [objective];
>
> c) whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether a party had sufficient notice of the dispute resolution proceeding;
>
> d) the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and
>
> e) the possible prejudice to each party.

As explained during the hearing on March 20, 2017, I find that the adjournment of the matters would not contribute to the resolution of the matter. The evidence before me indicated that M.N. refused to communicate with the Tenant, even by email and I find it doubtful that an adjournment would enable more effective communication.

Further, based on the submissions of the Landlord's counsel, namely, that M.N.'s medical issues were directly related to the stress of these proceedings, I find that it would be a prejudice to her to have these proceedings delayed.

Finally, counsel for the Landlord confirmed that he was prepared to make submissions on behalf of the Landlord.

In consideration of the above, I declined the Landlord's request for a further adjournment.

Issues to be Decided

1. Is the Tenant entitled to a Monetary Order in the amount of $10,820.00, including aggravated damages, for compensation for damage or loss under the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement?

2. Is the Tenant entitled to an Order that the Landlord comply with the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement?

3. Is the Tenant entitled to an Order suspending or setting conditions on the Landlord's right to enter the rental unit?

4. Should the Tenant recover the filing fee?

5. Is the Landlord entitled to a Monetary Order in the amount of $5,200.00 for money owed or for compensation for damage or loss under the *Residential Tenancy Act,* the *Residential Tenancy Regulation* or the residential tenancy agreement?

6. Should the Landlord recover the filing fee?

Background and Evidence

Tenant's Evidence

The Tenant testified that the initial tenancy began September or October 2014. The parties then entered into a one year fixed term tenancy commencing August 1, 2015 to July 31, 2016. Introduced in evidence was a copy of the written tenancy agreement pertaining to the latter period.

He stated that at the expiration of the fixed term the Landlord insisted the Tenant vacate the rental unit and began showing the rental unit to other prospective tenants.

He further testified that although M.N. gave notice to enter the rental unit on July 9, 2016, the Notice was later, at the hearing before the Arbitrator, found to be invalid; specifically, the Arbitrator found that the notice did not provide a specific time, nor was the reason valid; namely, to show to prospective tenants, as the Tenant did not receive a Notice to End Tenancy.

The Tenant further testified that at 2:00 p.m. on July 9, 2016 on M.N. came to the rental unit with prospective tenants, at which time the Tenant informed M.N. and the prospective tenants that the tenancy was continuing and that he would not permit M.N. to show the rental unit.

The Tenant stated that M.N. then returned to the rental unit at 4:00 p.m. on that same and entered the rental unit with an "unknown man through the basement." The Tenant testified that M.N. then came up the stairs to the main floor and began taking photos of the rental unit, including an occupant, R.D., who was at his desk on the main floor. When R.D. saw M.N. he called up to the Tenant and said "we've got visitors". The Tenant stated that he then came out of his room and saw the Landlord go into the bedroom occupied by R.B., without knocking, and whom he says was changing at the time and therefore partially unclothed.

The Tenant confirmed that he began filming the incident when M.N. came upstairs, where the Tenant's bedroom was located. A copy of the video was provided in evidence.

The Tenant stated that he and R.D. asked M.N. to leave to which she responded that she was performing an inspection. The Tenant further stated that M.N. told them that she was not consenting to the filming and that she was "going to sue for $10,000.00". The Tenant claimed that M.N. then grabbed R.D.'s phone out of his hand and began going through his videos and photos on the phone, which he noted was visible from the video taken from the Tenant. The man who accompanied M.N. then said to the Tenant and R.D., "she is deleting your files".

The Tenant stated that R.D. did not grab his phone from M.N., rather he tried to negotiate with her although this was unsuccessful as she demanded that they let her leave but she refused to return the phone. The Tenant stated that this went on for twenty minutes until the police arrived, who had been called by R.B.

The Tenant stated that when the police came, the police retrieved the phone from the M.N. and gave it to R.D. The Tenant further stated that the police took R.D. outside and spoke with her, and then came in and spoke to them. The Tenant stated that the police told them that they have a right to film within their home.

The Tenant stated that to his knowledge the photos on R.D.'s phone, which were deleted by M.N. were not recoverable.

The Tenant stated that M.N. left after this incident, although she returned later that day with another Notice to end tenancy which was not in the required form.

Nine days later, and on July 18, 2016 the Landlord provided another 1 Month Notice to End Tenancy for Cause.

The Tenant testified that on July 20, 2016 at 6:20 p.m. the Landlord and an unknown man came to the residence and knocked on the door repeatedly for what he estimated to be approximately 30 minutes. He stated that the Landlord failed to give any prior notice of her intention to attend the rental unit and he did not answer the door as he initially thought it was a door to door salesman. The Tenant stated that the Landlord came to the front door, and then to the basement back door and they tried to gain entry but the doors were locked.

The Tenant testified that this unknown man then started yelling the Tenant's name and said they needed to talk that they were being stupid. When the Tenant did not come to the door, the man yelled through the kitchen window that he smelt smoke and that he might have to come in; he confirmed that he and his roommate were home and there was no such smoke and the Tenant felt this was a threat by the Landlord to enter the rental unit in an emergency. The Tenant stated that the man then yelled that he would come back again and it would be very "inconvenient".

The Tenant was then served the Landlord's hearing package on July 22, 2016 for the hearing which was scheduled for August 4, 2016.

The Tenant testified that on August 1, 2016 the Landlord posted copies of the Tenant's tweets on the rental door. He confirmed that they were not in an envelope, rather, they were taped to the front door and he stated that they did not appear to be related to the August 4, 2016 hearing and they felt that this was just general harassment. A copy of those tweets was provided in evidence at page 6 of the Tenant's evidence.

This August 4, 2016 hearing convened as a result of the Landlord's Application for Dispute Resolution wherein she sought an early end to tenancy based on section 56 of the *residential Tenancy Act.* The Landlord's application was dismissed.

The Tenant testified that after the August 4, 2016 hearing, the Tenant saw M.N. attending the neighbourhood and going door to door and speaking to the neighbours and showing them photos of R.B. He said that it felt like she was canvassing the neighbours to badmouth them.

The Tenant further testified that on August 18, 2016 M.N. posted photos of their roommate, L.H. on the rental unit door. He stated that when they first moved in M.N. requested photos of all the roommates and this was the photo of L.H. that they gave to her. The Tenant stated that there was also a letter from L.H.'s ex-girlfriend's, C.H.'s, landlord wherein he wrote that he did not know who L.H. was. He stated that this photo and letter from the other landlord was posted to the rental unit door, again in plain sight and not in an envelope. A copy of this photo as well as the letter from the landlord dated August 18, 2016 was provided in evidence. The Tenant

further testified that this was very uncomfortable as L.H. and C.H. did not have an amical breakup. Introduced in evidence was an impact statement from L.H.

The Tenant stated that around the same time, photos of R.B. were also posted to the door by M.N. which the Tenant stated was a screenshot of her LinkedIn profile which provided private information about where she worked and what she did. The Tenant advised that R.B. was very upset about this and communicated that she felt that this was an extreme violation of her privacy, particularly after M.N. had come into her room with an unknown male while she was changing on July 9, 2017.

The Tenant stated that as a result of M.N.'s behaviour, R.B. is very uncomfortable in the rental unit. R.B. also provided an impact statement in evidence wherein R.B. confirms that at the time the Landlord entered her room on July 9, 2016 she was naked and had to hide behind a door.

A further hearing occurred on August 24, 2016 following which the Arbitrator found that the tenancy continued on a month to month basis. She further dismissed the Landlord's request for an Order of Possession based on a 1 Month Notice to end Tenancy issued on July 13, 2016.

The Tenant stated that he has also had difficulty paying the rent as M.N. will not communicate with him. He says that in late August 2016 he emailed M.N. about paying the rent and provided her with six days to come and pick up the rent. He then sent her an email on August 27, 2016 indicating that if he did not hear back from her by Monday morning (August 29) that he would mail the cheque. He confirmed that he mailed a cheque to the Landlord as she failed to respond.

The Tenant stated that M.N. then posted a letter to the door on September 6, 2016 in which she wrote the rent was provided late and that she would no longer accept email communication from the Tenants. M.N. also threatened to issue another 1 Month Notice to End Tenancy for unpaid rent.

The Tenant stated that a handyman came over on September 26, 2016 to fix a rotten step. He stated that M.N. accompanied the handyman and issued a Notice of Rent Increase on that date which was again posted to the rental unit door.

On October 3, 2016 M.N. posted another notice to entry for entry on October 8, 2016. In this letter the Landlord writes as follows:

> "This is your Notice, that on October 8-2016 between 1030am and 1130 am, there will be an inspection of [rental address], inspecting the property.
>
> This is your Notice, that if we find over-occupancy, it will result in a 1-Month Notice to Terminate the Tenancy.
>
> This is your Notice, that if we find any of the following deficiencies:

- If we find doors off,
- If we find fabric draping any doorway,
- If we find the fire extinguisher not restored to the kitchen stove,
- If we find the downstairs fridge not returned to the kitchenette,
- If we find any trip-hazards in passages,
- If we find any rom a mess/hoarding behaviour/food,
- If we find any bed blocking any doorway and/or fire exit,

it will result in a 1-Month Notice to Terminate the Tenancy for safety and fire hazard.

We do not consent to any taping.
Police advised you that it was allowed, but the Officer told me that applied to police in *public.* Reminder, the Police also told you that it was confrontational and rude.

If there is any blocking of our inspection, threats, or physical intimidation, it will result in a 1-Month Notice to Terminate the Tenancy.

We will be bringing our Rules & Regulations to the inspection.
This is your Notice, that if you do not re-sign our Rules & Regulations, as required under paragraph 34 of the Tenancy Agreement, it will result in a 1-Month Notice to Terminate the Tenancy."

The Tenant testified that on October 8, 2016 M.N. attended the rental unit with another unknown male who was different than the ones that had attended on July 9, 2016 and July 20, 2016. He stated that she began going through the spare room and suitcases. He provided a video of this interaction in evidence. In the video M.N. is heard questioning the Tenant's intelligence and asking him if he could read or graduated kindergarten. The Tenant stated that M.N. also asked what R.D.'s weight was as he was the one who fell through one of the rotten back stairs. The Tenant stated that when R.D. stated he weighed over 200 pounds M.N. laughed at them.

The Tenant testified that on October 8, 2016, M.N. also demanded that the Tenant to sign a "Rules and Regulations" Addendum which he refused. The Tenant stated that M.N. was very intimidating and became very upset when the Tenant refused to sign the Addendum. The Tenant further stated that M.N. refused to leave a copy of the Rules and Regulations which she was attempting to have the Tenant sign. The Tenant confirmed that the Landlord submitted a copy of it in evidence in her hearing package and from his perspective the Rules and Regulations appear as though they are "tailor made to try to evict us"

The Tenant confirmed that the Arbitrator had already dealt with the Landlord's request that the Tenant sign this document in her Decision of August 30, 2016 and drew my attention to the following portions of her Decision wherein she found:

> I noted that many of the details the landlord provided in the two page document referred to certain Rules and Regulations. There is a document entitled Rules and Regulations that was signed at the time of entering into the first tenancy agreement and it accompanied the first tenancy agreement. However, the landlord acknowledged that an addendum or another Rules and Regulations document was not signed at the time of

signing the second tenancy agreement and did not accompany the second tenancy agreement.

Clause 34 of the tenancy agreement refers to Rules and Regulations. It states:

> "The Tenant agrees that the Rules and Regulations delivered with this Residential Tenancy Agreement and such reasonable variations, modifications, and additions, as from time to time made by the Landlord, and any other further reasonable Rules and Regulations that may be made by the Landlords and communicated to the Tenancy in writing shall be observed and performed by the Tenant, his guests, and such Rules and Regulations shall be reads as forming part of the terms of this Residential Tenancy Agreement."
>
> [Reproduced as written with my emphasis underlined]

Since clause 34 specifically provides for Rules and Regulations that are "delivered with this Residential Tenancy Agreement" and no Rules and Regulations were signed or delivered with the second tenancy agreement I informed the landlord that I was not satisfied the Rules and Regulations that formed part of the first tenancy agreement formed part of the second tenancy agreement. The landlord argued that the Rules and Regulations from the first tenancy agreement transferred to the second tenancy agreement automatically or by default. I rejected the landlord's argument that Rules and Regulations from the first tenancy agreement transferred to the second tenancy agreement automatically or by default since the second tenancy agreement replaced the first agreement and it was without an addendum.

Also of consideration, and as the parties were informed during the hearing, is that a term in a tenancy agreement that conflicts with or violates the Act is not enforceable. Clause 34 would appear to be non-compliant as terms cannot be unilaterally added by the landlord after the tenancy forms. Accordingly, I informed the landlord that I would look to the terms contained in the second tenancy agreement, but not the addendum (the Rules and Regulations) that formed part of the first tenancy agreement, in hearing her allegations that the tenant was in breach of the tenancy agreement.

The Tenant stated that on October 21, 2016 the Landlord posted another notice to the rental unit door indicating the Tenant's October rent was late. He confirmed that his rent was not paid late, and that he had in fact sent the rent by registered mail on September 26, 2016 with a letter. He advised that he has a registered mail receipt confirming there was an attempted delivery on September 28, 2016 and that the rent was picked up by the Landlord on October 3, 2016.

The Tenant testified that another Notice was posted to the rental unit door on October 21, 2016 (although the letter was dated October 10, 2016) and in which M.N. again claimed the October rent was late and she threatened eviction. This letter was also included in the Tenant's evidence package.

The Tenant stated that on November 19, 2016 he received another Notice of Entry which again threatened the Tenant with eviction. Pursuant to this Notice, M.N. attended the rental unit on November 24, 2016. The Tenant stated that she brought two police officers with her that time.

The Tenant stated that he was happy she brought two police officers because this was the most well behaved she had ever been, but they were not happy as the neighbours saw M.N. attend with the police officers. The Tenant stated that M.N. continued to assert the Tenants were not permitted to film her, despite the fact the police informed her that they were. The Tenant further stated that during this inspection, M.N. looked in closets and took dozens of photos. The Tenant stated this inspection felt like an extreme invasion of privacy and did not in any way seem reasonable.

The Tenant stated that at that end of that inspection, he gave M.N. rent for January 2017 and the hearing package for this hearing on January 4, 2017. The Tenant stated that she attempted to leave the rental unit without taking the rent or the evidence package and said: “my inspection is over”. The police officer then said “did she take it”? and the Tenant stated that she had not. The Tenant then followed her down the stairs and she finally took the package right as she was walking away and the police were with her.

The Tenant stated that M.N. then inspected the rental unit again, on January 12, 2017, eight days after the first day of this hearing. The Tenant stated that on this date, M.N. attended with another person, a handyman whom she had used before (the one who fixed one of the steps). He said that she was crawling under the computer desks and was asking to look at their electrical outlets as she was alleging that the Tenants were unsafe with outlets and creating a fire hazard. The Tenant stated that this inspection felt the most invasive as M.N. was going through their rooms, under their desks and behind their beds, and they all found it very embarrassing.

The Tenant stated that there has been no indication that M.N.’s behaviour will stop. He stated that they all find it harassing and intimidating. He also stated that they feel very frustrated living under someone who has power over where they live, and who has to be the person to whom he pays rent and contacts for repairs, etc.

The Tenant stated that they have lacked peaceful enjoyment of the house for months now and they want her inappropriate behaviour to come to an end. The Tenants have tried to reach out through email and letters to try to have their boundaries respected and feel that so far there is no end in sight.

The Tenant submitted that they are relying on *Residential Tenancy Branch Policy Guideline 16* and are asking for aggravated damages because she is was already Ordered by the Arbitrator to comply with sections 28, 29 and 30 of the *Residential Tenancy Act* and she has continued to violate the Tenant’s rights.

The Tenant also stated that he has no means of communicating effectively with the Landlord or M.N. as she has refused email communication, when he attempts to call her, her voicemail is full and when he leaves a message she doesn’t call him back. He confirmed this is not workable as she is responsible for the rental unit.

The Tenant confirmed that amount of compensation claimed by the Tenant totals $10,820.00 and represents his claim up to an including October 2016. At the March 20, 2017 hearing the Tenant confirmed that the figure of $10,820.00 included a claim up to an including October 2016, and that the amount sought at the hearing as of March 2017 was a further $5,379.50 for a total of $16,199.50, which he confirmed represented return of 51% of rent paid.

Landlord's Response

In response to the Tenant's claims, M.N. testified as follows.

M.N. testified that in July 7, 2016 she personally provided the Occupant, L.H., with Notice of Entry for the purposes of showing the rental unit to prospective tenants. She stated that at no time did the Tenant indicate that he believed that the tenancy was to continue beyond the end date July 31, 2016 set out in the tenancy agreement. M.N. stated that she did not really hear back from the Tenant in this regard.

M.N. stated that L.H. thanked her for giving Notice and stated that he was happy to be the "new head Tenant" and handle all communications going forward.

M.N. stated that she understood the Tenant and Occupants would agree with the showings. M.N. stated that the first person who attended for the showing at 2:00 p.m. had previously seen the property even before the subject tenancy began .

M.N. stated that when she went to show the property, the Tenant, and R.D., came running out of the house and said to the prospective tenant, "we are going to have a meeting right now. We are going to discuss this. This is an 'illegal eviction'. These other people are going to hear that you are a slumlord. They are going to be witness. The Landlord was a slumlord and not to rent from them".

M.N. stated that she came back to the rental property at 4:00 p.m. She stated that she was trying tried to cancel all the showings after the altercation at 2:30 p.m. but she was not able to get in touch with the prospective Tenant, B.W.

M.N. stated that she knocked on the door and no one answered. She stated that she understood that the Tenant did not have to be home when she did showings, and when she realized the door was open she went in. She stated that she felt she was entitled to enter the rental unit at that time as she had given proper lawful notice.

M.N. stated that her entry at 4:00 p.m. was a "dual purpose" because she wished to show the unit, and the first person who had attended at 2:00 p.m. wanted photos of the interior. She said that she started taking pictures because she wanted to give the lady who had come for first

viewing at 2:00 p.m. photos of the rental unit as she said she was not going to consider the property until she saw current photos.

M.N. stated that she came into the rental unit through the downstairs front door. She claimed that this was not unusual as implied by the Tenant when he gave his testimony.
M.N. stated that no one was home downstairs and she then went upstairs where she saw R.D. working on his computer. She further stated that R.D. indicated to the Tenant that she was there but there was no interaction.

M.N. stated that there was a lot of "exaggeration" about the female occupant, R.B.. and stated that she did not see that R.B. was undressed; rather she stated that R.B. was wearing a toque and she believed she was doing a "hair video".

M.N. stated that the Tenant and the Occupant, R.D., then began videotaping the interaction. She initially confirmed that she had viewed the video and that it showed what happened. She then stated that R.D. is a videographer and she suspects he edited and deleted portions. She was not able to say what sections were deleted or altered.

M.N. further testified that she took R.D.'s phone from his hand but denied that she deleted anything off R.D.'s phone. She stated that had that been done she would have been reported to the police. She denied that she got off the home screen.

M.N. further testified that R.D. and the Tenant blocked her and she was not able to get out of the rental unit. M.N. stated that she was concerned about getting out of the rental unit.

The hearing did not complete and M.N. did not complete her response to the Tenant's claims, nor did she provide submissions on her monetary claim, save and except to say that the amount she sought related to losses she claimed to have incurred as a result of the Tenant's interfering with her efforts to re-rent the rental unit in July of 2016.

As noted, M.N. failed to attend the hearing on March 7, 2017 and the hearing was adjourned to March 20, 2017. M.N. failed to attend the March 20, 2017 hearing as well and her counsel's request for an adjournment was denied.

At the hearing on March 20, 2017 I summarized the above evidence for the Landlord's counsel's benefit. He thanked me for such a "detailed synopsis".

Tenant's Reply and Closing Submissions

The Tenant replied to the Landlord's evidence as follows.

The Tenant stated that M.N.'s testimony that they did not oppose the showing of the rental unit in July was false. He stated that he sent multiple emails and texts as well as calling her from

July 2 to July 9 regarding their view that the tenancy was to continue on a month to month basis after July 31, 2016.

The Tenant stated also that M.N. testified that they "yelled and screamed at the prospective tenant" which he also said was not true as they have been very careful with their interactions and they filmed this incident as well. He stated that the video was introduced in evidence before the Arbitrator on August 24, 2016 but not in this hearing. The Tenant was reminded that I would not review evidence which was submitted in other applications, only that which was submitted in this hearing.

The Tenant further stated that they have been very diligent in their collection of evidence, have reviewed and transcribed videos and are not just going by memory. He stated that the Landlord was going by memory only and that his evidence should be preferred.

The Tenant stated that M.N. did not come through an "unlocked door" as she testified; rather the door was locked and she used her key. He also said it simply does not make sense that she would have entered the house at 4:00 p.m. after they were allegedly yelling at her and the prospective renter on the street at 2:30 p.m.

The Tenant stated that they wished to cross examine M.N. about various allegations she made about him such as "committing elder abuse" or that he "misused medical information" but realized they might never get answers as she was absent for the last two arbitrations and was therefore not there for cross examination purposes.

R.D. also testified in reply to the Landlord's testimony. He stated that on July 9, 2016, he started recording her immediately when he caught her "red handed" in the rental unit without their consent. He said that the portion of the video, including when he said "we have unexpected guests" to the Tenant is the portion of the video which was deleted by M.N.

R.D. also stated that the person who came in with M.N. on that date did not appear to be a prospective renter as he seemed to know her. R.D. said that when the Landlord pushed him in the stairway, this man said to the Tenant and R.D. "yeah, she hit her mom earlier". As well, R.D. testified that when M.N. started deleting files on RD.'s phone, R.D. said "please don't look through my photos, there are naked photos of my girlfriend" to which this man said "that's immoral". R.D. also pointed out that this man didn't leave and say "this isn't the showing I expected" rather he stayed the entire time and he didn't leave until the police left. R.D. said it didn't seem like he was there for a viewing.

R.D. also stated that he suffered severe consequences as a result of M.N.'s behaviour as he was forced to tell his girlfriend that they may have seen photos of her on his phone. He claimed that his girlfriend was very upset and has not returned to the house since.

R.D. also stated that due to M.N.'s behaviour, L.H. also had to get in touch with his ex-girlfriend as M.N. had contacted her landlord and talk about where they were sleeping and when. He said this was very private and very unfortunate.

R.D. also stated that when the Landlord inspected the rental unit in early 2017, and was going to each electrical outlet, there was a point where she was behind the Tenant's bed and under his desk, and found a sexual item. R.D. stated that this was very embarrassing and intrusive.

The Tenant then provided closing submissions as follows. He stated that this whole ordeal has been very taxing on them, that it has been very emotional and time consuming and unnecessary. He said they have had months and months and months of standing eviction notices which they must apply to dispute otherwise they would lose their home.

The Tenant also stated that the only reason they would leave the rental unit is because of this harassment. He confirmed that they love the neighbourhood, they love the house and they love their roommates. He stated that it has gotten to the point where some of the occupants are considering leaving and G.C., who has lived with them for a long time (three houses) moved out mid-January 2017 as G.C. stated that after the January 12, 2017 inspection he would not live there anymore.

The Tenant further stated that it is completely unreasonable, for their "group" which they consider their family to be so disrupted by M.N.'s behaviour.

The Tenant reported that they are constantly worried M.N. will return to the rental unit. He said sometimes, when they are sitting in the back yard and hear a car they worry it is the Landlord and someone has to return to the house to make sure the door is locked. He also stated that when a roommate returns and they hear the door open and close they are worried it is M.N. and it is extremely stressful for everyone.

Landlord's Closing Submissions

Counsel for the Landlord asked the Tenant to confirm the amount claimed by the Tenant to which the Tenant confirmed they were seeking a reduction of 51% of the rent paid for devaluation of the rental unit due to the Landlord's breach of their right to quiet enjoyment, such that the amount sought was $16,199.50 in addition to the $100.00 filing fee.

Counsel submitted that he had reviewed the evidence and the summary of the testimony which had been provided by me on March 20, 2017. He further confirmed that not being a party to the dispute he was not able to make further submissions regarding any facts.

He then presented the following legal arguments:

The Tenant's damages are not existent, exaggerated or grossly overstated and submitted, if there are any damages at all, they are certainly not what is sought.

The Tenant seeks damages related to the various notices to end tenancy. However, having reviewed these earlier decisions, none of the Arbitrators found that the notices or actions of the Landlord were frivolous and that it is simply the Landlord exercising her legal rights.

He submitted that a review of the tenancy agreement confirms there was only one Tenant who was legally named to be a tenant, therefore any legal recourse against the Landlord is the sole right of the Tenant A.M., not the occupants. He further stated that having reviewed the evidence, and heard the summary of the testimony, that the vast majority of the disturbances and emotional distress that the Tenant and his roommates claimed to have suffered related to the roommates, not of the Tenant himself. If there are any damages it should be restricted to the Tenant himself. He further stated that had a roommate applied, the Residential Tenancy Branch would not have any jurisdiction to hear their claims as they are not Tenants. Finally, he submitted that if there are any monetary damages to consider, a large amount would need to be deducted because it relates to the roommates and not the Tenant personally.

He submitted that the Landlord attempted to re-rent the property in July 2016 on the assumption and genuine belief that the tenancy would have ended as per the fixed term of August 31, 2016 and that she had the right to re-rent. He conceded that the Arbitrators Decision was that the tenancy was to continue, but had it been gone the other way, the Landlord would have been seen to have taken appropriate steps to mitigate her losses by trying to re-rent right away.

Counsel also submitted that the issue is *Res Judicata* should apply to preclude the Tenant's monetary claim. Counsel stated that this principle covers not only the claims that were made but the claims that *might reasonably been made*. He then stated that the most significant dates are July 9, 2016 and July 20, 2016 when the Tenant alleges M.N.'s behaviour was very disturbing. It was on July 21, 2016 when the Tenant filed to dispute the Notice which was heard by Arbitrator Reid and she found as follows:

> "Should the landlord fail to protect the tenant's right to quiet enjoyment and violate my order the tenant may seek further remedy, including monetary compensation from the landlord".

Counsel stated that the Tenant did not make a monetary claim in July of 2016 and that in failing to do so, he is precluded from doing so as it was reasonable to do so at that time. He submitted that by allowing the Tenant to make a monetary claim on top of that offends the principle of *Res Judicata*.

Counsel also submitted that the Arbitrator stated that she would only deal with one issue, yet then she then did make an Order that the Landlord comply with the Tenant's right to quiet enjoyment.

Counsel confirmed that he did not have any instructions regarding the Landlord's monetary claim, specifically whether the amount sought related to loss of rental revenue for the subject rental property, or for any other property the Landlord may have.

Analysis

After careful consideration of the evidence before me, the testimony of the parties, the submissions made and on a balance of probabilities I find as follows.

I will first deal with the Landlord's argument regarding the legal principle *Res Judicata.*

M.N. submitted that the monetary relief sought by the Tenant had been dealt with when he was given recovery of the $100.00 filing fee during the August 24, 2016 hearing. She submitted that I was therefore unable to address a further monetary claim on the basis of the legal principle *Res Judicata,* which prevents me from considering issues which have already been decided.

As explained during the hearing on February 2, 2017 the Arbitrator dealt with only two issues on August 24, 2017; namely, the Tenant's request to cancel the 2 Month Notice to End Tenancy and the Tenant's request for a determination that the tenancy was to continue on a month to month basis following the end of the fixed term.

The Arbitrator also awarded the Tenant recovery of the filing fee pursuant to section 72 which reads as follows.

> **Director's orders: fees and monetary orders**
>
> **72** (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.
>
> (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
>
> (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
>
> (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

In the within action, the Tenant made an application for monetary compensation for breach of his right to quiet enjoyment in addition to aggravated damages. These claims were not before the Arbitrator. Further, even in the event the Arbitrator had decided on the Tenant's application for Orders that the Landlord comply with the *Act,* or an Order restricting the Landlord's right to enter the rental unit, the Tenant is at liberty to apply for these Orders in the event the Landlord continues to not comply with the *Act.*

Counsel for the Landlord made further submissions with respect to the issue of *Res Judicata* and submitted that the Tenant ought to have made his monetary claim at the time he filed to dispute the July 13, 2016 1 Month Notice to End Tenancy which was the subject of the August 24, 2016 hearing before the Arbitrator.

Pursuant to section 47(4) a Tenant must make an application to dispute a 1 Month Notice to End Tenancy within 10 days of service of the Notice. Such applications are scheduled on a priority basis as the continuation of the tenancy is at issue. A tenant is at risk of eviction if they do not comply with this strict deadline.

The Tenant did not make an application for compensation relating to the July 9 and July 20, 2016 incident as his application focussed on the urgent matters relating to his tenancy. I do not agree with counsel for the Landlord that the Tenant ought to have made a monetary claim at the same time.

I will now turn to the Tenant's claim for monetary compensation.

In a claim for damage or loss under section 67 of the *Act* or the tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Tenant has the burden of proof to prove his claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

In this case, the Tenant alleged that his right to quiet enjoyment was negatively affected as a result of the Landlord and her agent, M.N.'s behaviour. He also seeks aggravated damages and seeks compensation equivalent to a 51% reduction in the rent paid.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act,* which reads as follows:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** 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.

Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment provides in part as follows:

> "…
>
> Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.
>
> …
>
> Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.
>
> …
>
> A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.
>
> …
>
> In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.
>
> …

After careful consideration of the evidence, and the testimony of the parties, I find the Tenant has met the burden of proving that the Landlord and her agent breached section 28.

I find, based on the testimony of the parties and the evidence filed, that the Landlord and her agent have engaged in a campaign to evict and harass the Tenant and the occupants of the rental unit. I further find that M.N. has breached the Tenant's right to quiet enjoyment of the rental unit and his right to reasonable privacy and freedom from unreasonable disturbance.

I accept the Tenant's evidence that on July 2, 2016 the Landlord issued a notice to end tenancy which was not in the approved form.

The circumstances of the July 9, 2016 incident, which were detailed in this my Decision are particularly concerning. I find that the Landlord entered the rental unit without the Tenant's knowledge or consent, took photos of the Tenant and occupants and acted in a manner which was intimidating and hostile culminating in one of the occupants calling the police. Where the evidence of the parties conflicts I prefer the Tenant's evidence. I also note that M.N. failed to attend the hearing to be subjected to cross examination. Additionally, video evidence submitted by the Tenant, as well as testimony of one of the occupants, confirms his version of events. I further find it inconceivable that M.N. would believe she could enter the rental unit at 4:00 p.m. after the interaction at 2:30 p.m. and find it more likely that she entered the locked residence

with her key. I also accept the Tenant's evidence that this incident was very upsetting to the Tenant and the occupants and has impacted their desire to remain in the rental unit.

Following this incident, and on July 13, 2016, the Landlord issued a 1 Month Notice to End Tenancy. This was the subject of the August 24, 2016 hearing and was cancelled by Arbitrator Reid.

I accept the Tenant's evidence that on July 20, 2016, and without prior notice to the Tenant, M.N. again attended the rental unit with an unknown male and aggressively knocked on the door for approximately 30-40 minutes and spoke to the Tenant and the other occupants in a way which was both intimidating and threatening.

I accept the Tenant's evidence that beginning on August 1, 2016 M.N. then began posting to the rental unit door social media communications and profiles as well as photos related to the Tenant and the occupants. I find that this was not an attempt at service of documents as alleged by M.N. and her counsel, but was rather an intimidation tactic intended to embarrass the Tenant and the Occupants.

On July 22, 2016 the Tenant was served a hearing package for a hearing on August 4, 2016, wherein the Landlord sought an early end to tenancy pursuant to section 56 of the *Act.* This application was dismissed.

As noted, the Tenant then attended another hearing on August 24, 2016 wherein the Landlord's request for an Order of Possession based on the July 13, 2016 1 Month Notice to End Tenancy was also dismissed. M.N., who at that time was identified as the Landlord, was ordered to comply with the *Residential Tenancy Act.*

The evidence indicates that following the August 24, 2016 hearing, and on September 6, 2016 M.N. refused to accept email communication from the Tenant.

I further find that commencing September 2016 and continuing into October and until February 2017, M.N. impeded the Tenant's efforts to pay rent and then began making false allegations that the Tenant was late paying rent.

By letter dated October 3, 2016 M.N. made unreasonable demands of the Tenant and began inspections of the rental unit which, based on the evidence before me, I find were unnecessary and performed with the intent to intimidate and embarrass the Tenant and the occupants. I accept the Tenant's evidence that during the October 8, 2016 inspection, that M.N.'s behaviour was inappropriate, that she went through their personal closets and suitcases, and that she demanded the Tenant sign the Rules and Regulations addendum which had already been specifically dealt with by Arbitrator Reid, who found it did not form part of the agreement.

The Tenant testified that on November 24, 2016 M.N. attended the rental unit with police officers for another inspection and again inspected closets and other personal areas of the rental unit. I find M.N. performed this inspection without a valid reason and rather did so in an attempt to intimidate the Tenant and the occupants.

The Landlord then issued another 1 Month Notice to End Tenancy for Cause on January 2, 2017. As noted, this was the subject of the February 27, 2017 hearing and resulted in the Notice being cancelled.

During the hearing on January 4, 2017, I suggested to M.N. that she consider hiring a third party to manage the rental unit until the hearing concluded. She declined my suggestion, and instead performed another inspection on January 12, 2017. I accept the Tenant's evidence that during this inspection, M.N. crawled on the floor under desks taking photos of the electrical outlets.

Section 29 of the *Residential Tenancy Act*, provides as follows:

> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
>
> (d) the landlord has an order of the director authorizing the entry;
>
> (e) the tenant has abandoned the rental unit;
>
> (f) an emergency exists and the entry is necessary to protect life or property.
>
> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I find based on the demands made by the Landlord in her letters notifying the Tenant of the inspections, that the purpose of M.N's entry in the rental unit on October 8, 2016, November 24, 2016 and January 12, 2017 were not reasonable and were therefore not in compliance with section 29 of the *Act.* I also find that M.N.'s behaviour during those inspections, and particularly the October 8, 2016 and January 12, 2017 were disturbing and a violation of the Tenant's right to reasonable privacy.

The Tenant testified that on February 27, 2017 and after her request for an Order of Possession based on the January 2, 2017 1 Month Notice to End Tenancy was dismissed, M.N. issued a 2 Month Notice to End Tenancy for Landlord's Use.

I find that the Landlord and her agent have engaged in a campaign of harassment and intimidation of the Tenant and the occupants. I accept the Tenant's evidence that some of his guests now refuse to be at the rental unit, and one occupant has moved out as a result of concerns about M.N.'s behaviour. As he is the only Tenant on the tenancy agreement, he is responsible for the full payment of rent. I accept that the disturbances caused by the Landlord and her agent M.N. have created an extremely stressful situation for him. I also accept the Tenant's evidence that he is anxious even when he hears the door open, or a car pull up in front of the rental unit as he is concerned he may be subjected to a repeat of M.N.'s behaviour on July 9, 2016 or July 20, 2016, or will receive another meritless eviction notice.

As noted previously, in determining the amount by which the value of the tenancy has been reduced, I am to take into consideration the seriousness of the situation and the length of time over which the situation has existed. I find the Landlord and her agent's behaviour to be a serious violation of the Tenant's right to quiet enjoyment which has continued for over seven months from July 2016 to February 2017.

The Tenant submitted that the monthly rent from July 2016 to December 2016 was $3,500.00. As of January 2017, the rent increased to $3,629.50. Accordingly, the Tenant paid $21,000.00 in rent from July 2016 to December 2016, and $7,259.00 in rent for January and February 2017 for a total of $28,259.00.

I find, based on the above, that the Tenant is entitled to compensation in the amount of **$7,064.75** representing a 25% rent reduction for the months July 2016 to February 2017. This sum takes into consideration the fact that the Tenant's right to quiet enjoyment of the rental unit was impacted more significantly during some months than others, but that in general the value of his tenancy was reduced. This amount is to compensate the Tenant, not the occupants as they do not have any rights or responsibilities pursuant to the *Act.* I was not provided with any information as to the breakdown of payments of the monthly rent, however, it is the case that the Tenant remains 100% responsible for any such payments.

Residential Tenancy Policy Guideline 16 provides in part as follows:

> An arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:
>
> > "Nominal damages" are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

> "Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Although the Tenant specifically asked for aggravated damages, I make no award for aggravated damages, as I find the Tenant can be fully compensated by the above award.

I accept the evidence of the Tenant that M.N. refuses to communicate by email or telephone and has impeded his ability to pay rent or address issues relating to the rental unit. I also note that the Landlord's counsel's submitted that these proceedings have had a negative effect on M.N.'s mental health. In all the circumstances, I find it is appropriate that a third party property manager be retained to manage this rental unit.

I therefore Order, pursuant to sections 29 and 62(3) of the *Act* that the Landlord retain the services of a third party property manager to act as her agent in respect of this rental property. The cost of this person's services is to be borne by the Landlord and the Landlord is prohibited from making any claim for related compensation or seeking an additional rent increase for any related cost.

Should the Landlord fail to retain a third party property manager by May 1, 2017, the Tenant shall be entitled to reduce his rent by a further 25%.

The Tenant, having been substantially successful, is entitled to recover the **$100.00** filing fee for a total award of **$7,164.75.**

Landlord's Claim

In the Details of Dispute Section of the Landlord's Application for Dispute Resolution filed December 13, 2016, and submitted by M.N. the following was written:

> "Tenants R.D. and A.M. chased away our prospective tenants (never notified us that they did not agree with a showing. In fact they told us they would co-operate!).
> They told our prospective tenants false, misleading and defamatory information "to ensure they would NEVER rent from us".
> We lost income/rent on another house we were trying to rent out at the same time.
> We also lost referrals."

I find the Landlord has failed to meet the burden of proving their monetary claim for $5,200.00 for the following reasons:

- As the subject tenancy continued on a month to month basis pursuant to the Arbitrator Decision, the Landlord was not able to re-rent the unit, and therefore any loss of potential rent from others is not recoverable.

- The Landlord failed to submit any evidence or provide any testimony or submissions with respect to any claim that they lost income and rent from "another house" due to the actions of the Tenant. Counsel for the Landlord was not able to provide any information in respect of this claim.

- The Landlord failed to submit any evidence or provide any testimony or submissions to support a finding that they also lost referrals. Similarly, the Landlord failed to submit any details with respect to any alleged loss in this regard. Counsel for the Landlord was not able to provide any information in respect of this claim

I therefore dismiss the Landlord's claim for $5,200.00.

Conclusion

The Tenant is entitled to compensation in the amount of **$7,164.75** representing a 25% rent reduction from July 2016 to February 2017 in addition to recovery of the filing fee.
The Tenant is to be credited this sum towards any future rent payments. Should the tenancy end prior to this sum being recovered, the Tenant is entitled to make an application for a Monetary Order for the balance due.

The Landlord shall, by no later than May 1, 2017 hire a third party property manager for the rental unit. Should she fail to do so, the Tenant may reduce his rent by a further 25% per month, in addition to the amount awarded above. This 25% reduction is from the total monthly rent amount.

The Landlord's monetary claim is dismissed in its entirety.

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: April 20, 2017

Residential Tenancy Branch