



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

The tenant applies for a monetary award for the cost of medical care for her pet dog, for damages relating to her own recovery and actions of the landlord and to recover the equivalent of two months rent provided for by s. 51 of the *Residential Tenancy Act* (the “Act”) where the rental unit is not used for that stated purpose for at least 6 months after a two month Notice for landlord use of property.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord is responsible for the tenant’s dog’s physical condition? If so, what if any compensation is appropriate? Is the landlord responsible for the tenant’s emotional condition and the cost of her recovery? Has the landlord otherwise breached the *Act* or the tenancy agreement entitling the tenant to compensation?

### Background and Evidence

The rental unit is a bachelor suite attached to the landlord's house. The property is a rural one. The landlord is a part time veterinary technician and conducts hobby farming on the property.

The tenancy started in December 2014. It ended January 25, 2015 when the tenant returned possession to the landlord as the result of a two month Notice to End Tenancy for landlord use of property. The landlord intended that her mother take residence in the rental unit, which her mother did.

The monthly rent was \$750.00. The parties have resolved all issues involving the security deposit and pet damage deposit.

The tenant brings this application exactly two years after the end of her tenancy.

The landlord has dogs; three little ones and a larger one, "C". The tenant describes the larger one as a "protection" dog. The landlord describes it as a "flock guardian" dog and says it weighs about 86 lbs., not the 150 lbs. the tenant claims. She says the dog is not a "guard dog," is not aggressive and does not use its mouth.

At the start of the tenancy the tenant brought with her a small dog "H" aged about ten years of its fifteen to eighteen year normal life. She had obtained the dog from a friend that same year; 2014. She says her dog weighs about fourteen lbs.

It is agreed that during the first few days of December all the dogs got to know each other and were interacting in a normal manner.

On the evening of December 5, at about 6:00 p.m. the tenant was walking across the landlord's front lawn to drop off her garbage at the street. She had her dog with her on a leash. She was using a leash because she was worried about attacks by bears or cougars.

According to the tenant, the landlord's dog C came up and grabbed H by the neck with its mouth, flipped it over and pinned it to the ground with a paw. She described it as a normal "dominance" act between dogs. The tenant yelled and C jumped off. That ended the incident.

The landlord's husband Mr. M.M. came out at that point. Unfortunately he did not give evidence about what happened next.

The tenant says she carried her dog away. The dog had no bite marks but its legs were straight out "in shock." Arriving home she noted that the dog wouldn't jump on the couch, nor would it urinate. The next day the dog still would not pee and it was dragging its rear legs like it was paralyzed.

The landlord says she observed the scene just after the altercation. In her view, her dog would not have used its mouth on the tenant's dog but would have pushed with its nose. She says she saw the tenant walk her dog home on its leash. Later that day the landlord emailed her inquiring of the dog. The tenant reported that she thought her dog was okay "he just hasn't been feeling good today" and that she probably should not have had her dog on a leash. She stated that the landlord's dog C was just doing her job and "its all good."

At hearing the tenant says her statements in the email were not accurate and her dog was doing very poorly at that stage but she did not want to raise trouble with her new landlord. She noted in a December 9 email to the landlord that after the altercation of December 5, when she got her dog to the front door its legs were "hanging from its body with no muscle control."

On December 7 the parties took the tenant's dog to the vet clinic where the landlord works. The dog was examined by a Dr. L. who conducted blood tests and an x-ray, injected a pain reliever and prescribed prednisone and what appear to be dietary supplements. It would appear to have been the veterinarian's advice that a proper diagnosis of the leg problem then apparent would require a CT scan, at a cost of \$1000.00. Dr. L. recommended that the tenant have the dog put down and said she would if it were her dog.

The cost of that visit was over \$600.00, but the landlord, as an employee enjoyed a reduced rate. The final bill was about \$85.00, which the landlord paid.

The tenant thought about putting the dog down but her daughter and a friend started fundraising for medical treatment.

On December 9, the tenant's dog was admitted to a veterinary hospital for seven days at a cost of about \$10,153.80, for a CT scan and a resulting hemi laminectomy surgery for what is referred to as a "slipped disc."

Some of the money for that surgery, about half, according to the tenant, was obtained by fundraising. The other portion was paid by the tenant either from her own funds or from borrowing.

By December 9 the tenant concluded that the landlord's dog was responsible for the slipped disc and for a bladder infection that in her opinion Dr. L should have diagnosed and treated. By email she demanded the landlord acknowledge responsibility and pay for her lost wages.

The tenant claims that after the incident the landlord entered her suite without permission in her absence and stole a letter, harassed her and verbally and physically attacked her.

It is her feeling that the incident and the landlord's conduct after it have caused her severe emotional upset. The tenant suffered from fibromyalgia before the tenancy but now has chronic fatigue syndrome, an anxiety disorder and a fear of dogs and people.

It is not disputed that the landlord's mother moved out of the rental unit and a new tenant took possession of it on July 1, 2015.

## Analysis

### Two Month Penalty

Section 51 of the *Act* provides:

- (2) In addition to the amount payable under subsection (1), if
  - (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
  - (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

It is apparent that the landlord did not use the rental unit to house her mother for requisite six month period. The tenant is entitled to the double rent penalty in s. 51. I award her \$1500.00.

#### Veterinarian Bill

I must dismiss this item of the tenant's claim. The evidence does not prove to the required standard that the landlord's dog did anything outside the realm of normal dog behaviour. As well, the tenant's loss is simply too remote.

The tenant's evidence about what happened on December 5 is not very clear, particularly her testimony about the observance of symptoms. Had her dog's hind legs been "hanging from his body with no muscle control" as she asserts in her December 9 email to the landlord, I have no doubt that she would have immediately told the landlord. She would not have emailed that the dog was "ok."

The incident occurred during what both parties refer to as normal dog behaviour. If the slipped disc the tenant's dog suffered had occurred during the December 5 interaction, that is very unfortunate, but it would seem to be an injury the dog could have sustained in any of the many ways dogs romp and interact with each other. Indeed, it could have be the result of the tenant's reported yanking of the leash to pull her dog away.

I find that the physical state of the tenant's dog has not been shown to be the result of any particular action, wrongful or otherwise, of the landlord's dog.

In any event, after the diagnosis of the dog, the reasonable course of action would have been to have the animal put down, thus saving the tenant considerable expense. I find that even had the landlord been responsible for the tenant's dog's slipped disc, it was not reasonably foreseeable that the tenant would go the extraordinary expense of over \$10,000.00 for surgery and a seven day hospital stay.

#### The Landlord's Conduct and the Tenant's Emotional Suffering.

The evidence does not persuade me that the landlord ever entered the tenant's suite without permission, nor that she stole a letter from the suite.

It is apparent that the parties' early friendship broke down after the incident but there is no credible basis upon which to find the landlord harassed the tenant. Indeed, the written correspondence shows the landlord to be concerned and helpful. If anything, it was the tenant who became unreasonable by reporting to the local government that the landlord was permitting a "dangerous dog" to "run at large" and by requesting a police escort to travel from the street to her rental unit when bringing her dog home from the hospital.

Regarding the tenant's emotional condition, I pause to say that there is no doubt but that she suffered trauma as a result of the series of events starting on December 5 and through to December 16 when the dog was released from hospital. She is obviously very attached to her pet. Indeed, it appears she took time off work and spent considerable effort to help the animal in its convalescence.

However, as I have found that the landlord is not responsible for the injury to the tenant's dog, the landlord is equally not responsible for emotional upset caused to the tenant by the incident or its aftermath.

#### Other

During the hearing it was indicated that the tenant held the landlord responsible for a bladder infection her dog suffered at the same time as the slipped disc. The tenant postulates that Dr. L. should have diagnosed and treated the infection.

Whether Dr. L. was negligent or not is a question beyond the scope of this forum. That having been said, I find that the tenant and landlord together took the dog to Dr. L. and it was as much the tenant's choice as the landlord's. The landlord is not liable for what Dr. L. did nor did not do.

Conclusion

The tenant will have a monetary award of \$1500.00. As she has been only partially successful, I authorize her to recover \$50.00 of the filing fee. The tenant will have a monetary order against the landlord in the amount of \$1550.00.

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: July 24, 2017

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Residential Tenancy Branch