



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC FF MNDC

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the *Act*), I was designated to hear this matter. This hearing dealt with the tenant's application for:

- a Monetary Order pursuant to section 67 of the *Act*;
- an Order for the landlord to comply with the *Act* pursuant to section 62; and
- a recovery of the filing fee from the landlord pursuant to section 72 of the *Act*.

Only the tenant attended the hearing. The tenant was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant gave undisputed testimony that an Application for Dispute Resolution and evidentiary package were sent by way of Canada Post Registered Mail to the landlord. The tenant could not recall the date that the document was sent, but a copy of the Canada Post tracking number and the returned envelope were submitted to the hearing as part of the tenant's evidentiary package. An online search on the Canada Post website demonstrated that this package was sent by Canada Post Registered Mail on March 2, 2017. The tenant stated that the package was returned to him shortly after it was sent and the package was marked, 'unclaimed.' Pursuant to sections 88, 89 and 90 of the *Act* the landlord is found to have been served with these documents in accordance with the *Act* on March 7, 2017.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for loss of quiet enjoyment?  
Can the tenant recover the filing fee?

### Background and Evidence

The tenant provided undisputed testimony that this tenancy lasted for only the month of February 2017. He said that due to the very poor condition of the rental unit he moved out almost immediately. The tenant explained that rent was \$700.00 and a security

deposit of \$350.00 paid at the outset of the tenancy was returned to him following move out.

The tenant said that he was seeking a Monetary Order of \$620.00 in reflection of a loss of quiet enjoyment that he experienced while living in the rental unit. He said that a large hole was present in the suite which led directly outside. The tenant described this hole as being approximately the size of his hand. Photographic evidence was presented to the hearing demonstrating its size. The tenant explained how he was very cold as a result of this hole. This discomfort led him to vacate the rental unit almost immediately after moving in.

Undisputed testimony from the tenant described the efforts he made to speak with the landlord about this hole. The tenant informed that the landlord told him he was not interested in fixing the hole as the home was about to be sold.

In addition to the hole, the tenant explained that the landlord called him three times during the tenancy, very late in the evening. These were described as rambling calls, which often led the tenant to experience loss of sleep. The tenant also detailed daily stomping on the ceiling by his landlord. He said these events took place as late as 2:00 A.M.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove his entitlement to a claim for a monetary award.

The tenant explained that he suffered a loss of quiet enjoyment as a result of the landlord's actions and because of the large hole present in the wall of the rental unit.

Section 28 of the *Act* provides that a tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

After reviewing the photographs entered into evidence, the documents displaying the late night phone calls received from the landlord, and based on the undisputed testimony of the tenant, I find that the landlord has unreasonably disturbed the tenant. There is evidence that frequent, ongoing interference occurred. Further undisputed testimony was presented that the landlord took no steps to fix a hole, thus causing great discomfort to the tenant, and evidence was presented that the landlord actively attempted to disturb the tenant.

As the tenant was successful in his application, he may recover the \$100.00 filing fee from the landlord.

#### Conclusion

I issue a Monetary Order in the tenant's favour in the amount of \$720.00 against the landlord. This amount includes a return of the filing fee. The tenant is provided with a Monetary Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 25, 2017

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Residential Tenancy Branch