



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC.*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss of quiet enjoyment in the amount of a \$200.00 rent reduction for each month of the period of August 2015 to April 2016, for a total of \$1,800.00. The tenant also applied for aggravated damages and compensation for events that took place between May 20 and May 23, 2016 in the amount of \$3,000.00.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Both parties provided extensive documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on December 15, 2014. The monthly rent was \$1,050.00. On June 03, 2016 the parties entered into a mutual agreement to end tenancy. The tenant moved out on June 30, 2016.

In October 2016, the parties made applications for dispute resolution for monetary orders against each other. This matter was heard on April 19, 2017. The Arbitrator offset the established claims of the parties against each other and granted the tenant a net order of \$500.00.

Nine months after making the first application and 13 months after the end of tenancy, on July 27, 2017, the tenant made a second application for a monetary order against the landlord, which is the subject of today's hearing.

The tenant testified that sometime in early 2016, the landlord was observed entering the rental unit, by a neighbour who reported it to the tenant. The tenant was unable to provide a date of this alleged entry into the rental unit. The landlord denied having ever entered the rental unit without the permission of or in the absence of the tenant.

The tenant also stated that the landlord would look through the windows into the rental unit. The tenant's explanation was that the landlord had suspicions that the tenant's ex was living in the rental unit. The landlord agreed that he suspected that the tenant's ex was living in the unit because her ex was observed inside the unit during the day at times that the tenant was away at work. The tenant stated that she informed the landlord that his surveillance through the windows made her uncomfortable. The landlord denied having had a conversation with the tenant regarding her discomfort.

The tenant stated that the landlord had promised her that she would be provided with free Wi-Fi and cable but he did not follow through with his promise. The landlord denied having promised the tenant these services. The tenancy agreement does not list these services as included in the rent.

The tenant described an altercation between her and the landlord which took place on the driveway, sometime in February 2016. The tenant stated that the verbal altercation continued inside the rental unit when the landlord followed her son into the unit

The tenant stated that the landlord played loud music about two to three times a month. and she called the police on two occasions but cancelled the first call prior to the police attending the residence. The tenant made the second call on May 22, 2016 and the landlord turned down the music after the police attended the residence. The tenant stated in her written submission that after the police left, the landlord started banging on the tenant's door, yelling and swearing at her and her child.

The tenant stated that her nine year old son felt the effects of the landlord's intimidating and abusive actions which caused the child undue fear and trauma. The tenant also stated that the name calling and actions of the landlord caused her stress and loss of quiet enjoyment.

The tenant is claiming a rent reduction in the amount of \$200.00 per month for the loss of quiet enjoyment during the period of August 2015 to April 2016 for a total claim of \$1,800.00. The tenant is also claiming \$3,000.00 as aggravated damages for the extreme fear felt by her and her son when the landlord violently disturbed the tenant by banging on her door and yelling at them, on the night of May 22, 2016.

The landlord denied all the allegations of harassment and name calling. The landlord stated that the tenant smoked marijuana inside the rental unit knowing full well that smoking was not permitted inside the rental unit. The landlord also added that the tenant drank alcohol and made racial slurs against him. The tenant denied the allegations made by the landlord.

The landlord stated that the tenant could have moved out at any time if she felt harassed and threatened and had the option to file for dispute resolution during the tenancy but she chose not to and also chose to continue to rent the unit for a total of 18 months. The landlord also pointed out that the tenant made a monetary claim against the landlord in October 2016, but failed to include a claim for compensation.

### **Analysis**

Based on the testimony of both parties, I find that the problems presented by the tenant for which she is requesting compensation, started in August 2015, when the landlord allegedly started to harass her and play loud music. However the tenant continued to occupy the rental unit for a further 10 months until June 30, 2016, without making application for dispute resolution. The tenant had the option to move out with 30 days' notice or enter into a mutual agreement to end tenancy which was the method that they eventually employed to end the tenancy

Based on the testimony of both parties, I further find that after the incident on May 22, 2016, for which the tenant is claiming aggravated damages, the tenant felt that her safety was in jeopardy, but continued to occupy the rental unit for the next five weeks.

In addition, the tenant made an application for the return of the security deposit on October 17, 2016 but failed to add a claim for compensation.

Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome".

The tenant stated that the landlord harassed her by playing loud music, looking through her windows and using abusive language towards her and her child. The landlord denied the allegations and the tenant did not file sufficient evidence to prove that the landlord had done so. Even though interaction between the parties caused the tenant some anxiety, I find that the actions of the landlord do not fit the definition of harassment.

With regard to the tenant's monetary claim for compensation for the loss of quiet enjoyment in the amount of \$1,800.00, I have reviewed the submissions of both parties and I find that the relationship was stressful on both parties for different reasons. Other than the understandable angst and stress which accompanies a state of disagreement and uncertainty, the tenant did not provide compelling evidence to support her claim of compensation for harassment and loss of quiet enjoyment and therefore the tenant's claim for compensation in the amount of \$1,800.00 is dismissed.

"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.

Based on the testimony of the tenant, I find that she is claiming aggravated damages for an incident that took place on May 22, 2016. The incident started with loud music played by the landlord followed by a 911 call by the tenant and a subsequent visit by the police. The tenant testified that the music was turned down but after the police left, the landlord started banging on her door and yelling obscenities.

While I accept that the landlord behaved badly by banging on the tenant's door at night, I find that significant damage or loss was not caused by the actions of the landlord. In addition the tenant continued to reside in the rental unit for the next five weeks and the tenant failed to include a claim for aggravated damages in the first application she made against the landlord.

Res Judicata is a rule that a final judgment on the merits by a court having jurisdiction is conclusive between the parties to a suit as to all matters that were litigated or that could have been litigated in that suit.. The court allows a party to litigate a civil lawsuit for money damages only once.

The rule of res judicata is employed to prevent a dissatisfied party from trying to litigate the issue a second time. In this case the tenant made a claim for monetary damages against the landlord in October 2016 but failed to include her claim for compensation for harassment, loss of quiet enjoyment and for aggravated damages. The tenant has made a subsequent claim for the above mentioned compensation in an application dated July 2017.

Based on the doctrine of res judicata, I find that the tenant's claim for compensation must hereby be dismissed

The tenant has not proven her case and must bear the cost of filing her own application.

### **Conclusion**

The tenant's application 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: December 20, 2017

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Residential Tenancy Branch