



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      PSF, LRE, OLC, ER, LAC, MNDC

### Introduction

The tenant applies for compliance and repair orders and to restrict landlord access. By a late amendment she also seeks a monetary award for damages related to her vacating the premises. Though the monetary claim was served on the landlords within fourteen days of the hearing, contrary to the Rules of Procedure, the landlords agreed to have the matter heard at this hearing.

The tenant vacated the rental unit at the end of December 2017 and so only the monetary claim is still in issue.

The listed 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

Was the tenant wrongfully forced to leave the rental unit? If so, what damages reasonably flow from it?

### Background and Evidence

The rental unit is a one bedroom basement suite in the respondents' house. There is a written tenancy agreement. It discloses that only Ms. H.P. is the tenant's landlord.

The tenancy started in November 2016. The last rent was \$770.00. The landlord holds a \$375.00 security deposit.

The tenant says that in the fall she started making candles for retail sale in her rental unit. She had developed a technique whereby the candles sparkle and would appear to flow like lava. It was a trade secret.

She says that someone, she thinks it was one of the respondents, secretly entered her rental unit and tampered with the sand-like colourant she used for different colours for her candles. The colourant was stored in pill-like containers. She noticed some of the colourant in the containers was missing.

As a result the candles she had placed for sale in shops were defective. She recovered all the candles and began testing her manufacturing process. She discovered that her colourant was once again working properly. She asserts that the landlord or Mr. I.L. had again secretly entered her rental unit and restored the colourant to its original form or quality.

She had called the police about it but the constable who attended refused to enter her rental unit to be shown what had happened.

The tenant also claims that sometime in the fall, perhaps early December, the landlord Ms. H.P. had pushed past her at her door and wrongfully entered her rental unit. She says she called the police and the attending constable spoke to her and then went upstairs and spoke to the landlord and Mr. I.L.

She says that in late December the landlord turned her heat down so low that her thermometer registered only 15 degrees.

She says that in December there was a man her suite fiddling with the fuse box. As well, she thinks her phone has been "hacked" and suspects the landlord because the landlord works at an IT business. She also feels that in the last few days of her tenancy the landlord had not been activating the alarm system for the home, putting her safety in jeopardy.

In response, Mr. I.L. testifies that he has no knowledge of the tenant's candle colourant and did not enter her suite or dabble with it.

He is not happy about the tenant making candles on the stove in the rental unit. He says it voids his insurance policy and uses excessive power consumption. Power costs are included in the tenant's rent.

He says that immediately upon the tenant complaining about being cold, he purchased and tried to deliver to her a space heater for her, finally succeeding on December 23. He says the tenant had lived there all through the previous winter without complaint and it was only in late December 2017 that she said she was cold.

He says it's his habit to turn the security system on but acknowledges that sometimes, if he's making a quick trip, to pick up his young daughter for example, he might not bother.

The landlord Ms. H.F. denies ever entering the tenant's rental unit without permission and knows nothing by candle colourant. She says that she and Mr. I.L. work all day away from the home. She is an accountant not an IT person.

She denies ever pushing the tenant. She says that the incident the tenant complains of occurred on December 10. The tenant had called her in the evening about being cold. She went down to the tenant's suite and was admitted so that she could check that the heating vents were open and working. When she approached the kitchen to check the vent there, the tenant grabbed the hood of her coat and pulled her back. Despite this, the landlord said she'd get the tenant a heater. She was upstairs making dinner when the police arrived later that evening.

The parties also referred to the matter of the tenant's couch in the garage, the tenant's use of the garage as an access way to her suite and an incident raised by the landlord but not by the tenant at first, regarding the running of a vehicle creating fumes which made the tenant ill. The tenant says the vehicle was in the garage and the fumes were in her rental unit. The landlord says the vehicle was briefly left running in the driveway and the tenant was standing beside it having a smoke.

The tenant's position is that she had to move for safety reasons. The material filed by the tenant, though not referred to during the hearing, claims \$404.60 for storage costs, \$1300.00 for air flights, \$150.00 for mileage and a \$60.00 charge for change of address.

### Analysis

The question is whether the landlord or Mr. I.L. displayed such conduct as to warrant the tenant leaving on short notice.

To each of the tenant's allegations, the landlord and Mr. I.L. respond with fairly detailed denials.

I can find no reasonable ground to determine that one side's version of events is more likely than the other or that the tenant is more or less credible than the landlord or Mr. I.L.

In such circumstances, the decision must come down to which of the parties bears the burden of proof. Since the tenant is the applicant she bears the initial burden to satisfy the arbitrator, on a balance of probabilities, that her version of events is the more likely. She has not done so in this case and so her monetary claim against the landlord must be dismissed.

### Conclusion

The tenant's application is dismissed.

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: February 15, 2018

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Residential Tenancy Branch