



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, MT, OLC, PSF

### Preliminary matter

At the start of the conference call the Tenant said that she moved out of the rental unit on March 19, 2018. The Tenant continued to say she is withdrawing her application to cancel the Notice to End Tenancy, for more time to make the application and for the Landlord to provide services and facilities agreed to in the tenancy agreement. The Tenant said she is still requesting her monetary claim and for the Landlord to comply with the Act, regulations and tenancy agreement.

### Introduction

This matter dealt with an application by the Tenant for compensation for loss or damage under the Act, regulations or tenancy agreement and for the Landlord to comply with the Act, regulations and tenancy agreement.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on January 25, 2018. Based on the evidence of the Tenant and the Landlord testifying he received the hearing package, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Has the Tenant had a loss or damage?
2. Is the Tenant entitled to compensation for that loss or damage and if so how much?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?

### Background and Evidence

This tenancy started on March 15, 2014 as a month to month tenancy. Rent was \$550.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$262.50 at the start of the tenancy and has been returned. The Tenant said she moved out of the unit on March 19, 2018 as a result of a 2 Month Notice to End Tenancy for Landlord's Use of the property and because of disputes with another tenant. No condition inspection reports were completed for this property.

The Tenant said this has been a good tenancy and she was friendly with the other tenant in the rental house until approximately November, 2017. At that time an issue between the tenants became a dispute over how the parking was to be use and who would park where. The Tenant said the other tenant was very difficult to work with and she demanded that the Tenant move her car off the parking area and told the Tenant to park off site.

The Landlord said they tried to talk to the both tenants about this issue as there was ample parking around the house but the parking issue seemed to escalate between the two tenants. The Landlord said they felt both tenants were being unreasonable and quite aggressive. The Landlord said they told the tenants the parking spot on the property could be used on a first come basis. The other tenant would have to park in a public area. The Landlord said they did their best to resolve the parking issue and although not full resolved to the Tenant it was dealt with and there was a parking protocol.

The Tenant said it was the Landlord's responsibility to protect her rights at the rental unit. The Tenant said the Landlord did not protect her rights.

The Tenant continued to say the dispute with the other tenant escalated again when the other tenant and the Tenant had another disagreement over a table and chair in the common area by the Tenant's door. The Tenant wanted the table and chair moved and the other tenant would not agree to move the table and chair. This incident happened in November, 2017 and resulted in a physical altercation between the Tenant and the other tenant. The Tenant said the other tenant pushed the table at her resulting in an injury to her hand and leg. The Tenant said she went to the hospital to be treated for the injuries. Further the Tenant said the Police were called but no charges were laid as the Police said it was a situation of one persons word against another persons word and it would not stand up in court. The Tenant said she complained to the Landlord and the Landlord did not take action against the other tenant. The Tenant continued to say the Landlord did not protect her quiet enjoyment of the rental unit and therefore the Landlord is responsible for her stress and loss of enjoyment of the unit. The Tenant added that the Landlord said he would evict her if she phoned the Police again.

Further the Tenant said she has had to withhold rent many times to get the Landlord to repair things in her unit. As well the Landlord was unreasonable with her when she was

storing some of her belongings outside of her rental unit and the Tenant said the other tenant tampered with her things in storage. The Tenant said the Landlord did not prevent it the other tenant tampering with her things. Again the Tenant said the Landlord did not protect her rights and quiet enjoyment of the rental unit,

As a result the Tenant said she is requesting the Landlord pay her \$4,999.99 for her loss of quiet enjoyment of the rental unit. The Tenant said she suffers from PTSD and anxiety and this situation has made her health issues worse.

The Landlord said they have tried to talk to both the tenants and they found that since approximately November, 2017 after the parking incident both tenants have become aggressive and very combative with each other. The Landlord said they have talked to both of them together and individually. The Landlord continued to say they spoke with the tenants about the parking issue and told the tenants that the on property parking space was on a first come basis. As well the Landlord said there was ample parking on the street and across the street. The Landlord said they thought that both tenants were unreasonable and aggressive towards each other. The Landlord said they thought the parking issue was resolved and there were less complaints about it.

Further the Landlord said the physical altercation on November 24, 2017 was a result of the tenants disagreeing. The Landlord said they were not present for the full incident. The Landlord said they spoke with both the tenants after the Police left and told both tenants to get along. The Landlord continued to say there were no more physical altercations between the tenants after the Landlords spoke to the tenants. The female Landlord said her husband did not say that if the Tenant phoned the Police again they would evict her. The Landlord said the dispute between the tenants was between them and the Landlord could not have prevented it. The Landlord said they have now sold the house and the tenancies are ending.

The Landlord said in closing that they tried to resolve issues between the tenants. The Landlord said they solved the parking issue. They spoke to both tenant about the fight on November 24, 2017 and told both tenants to get alone and the Landlord said she told the other tenant not to touch the Tenants belongings that were stored outside. The Landlord said they believe they have tried to keep the quiet enjoyment for both tenants. As a result the Landlord said they believe the Tenants claim of \$4,999.99 for loss of quiet enjoyment is unproven and wrong.

The Tenant said in closing that this tenancy has been a struggle since the start as the Landlord has not protected her quiet enjoyment of the rental unit. The Tenant said she first dealt with the male Landlord and he was not responsive to her requests and then she dealt with the female Landlord who did try to resolve issues and deal with the other tenant. The Tenant said she feels that her tenancy was devalued by the loss of quiet enjoyment and the Tenant requests \$4,999.99 from the Landlord as compensation. The Tenant was asked how she arrived at that amount and the Tenant said she just picked that number for the amount.

## Analysis

I have reviewed the evidence submitted and the testimony given at the hearing and it is apparent that there are issues between the Tenant and the Landlord as well as issues between the Tenant and the other tenant.

The Residential Tenancy Branch, Policy Guideline #6 says:

Under section 28 of the Residential Tenancy Act (RTA) and section 22 of the Manufactured

Home Park Tenancy Act (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

### **B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to 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. In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed. A tenant may be entitled to compensation for loss of

use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Further for a monetary claims for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act and the applicant must show how they mitigated or minimized the loss.

It appears from the evidence and from the testimony of the Tenant and the Landlord, the Tenant and the other tenant had a good relationship up to the dispute about the parking space. At this time for what ever reason the tenants could not agree on how the parking should work. The Landlord did take action by speaking to the tenants and telling them the parking space was on a first come basis. I accept the Landlords did their best to resolve the dispute and establish a protocol for the parking. It should also be noted that parking is not included in the tenancy agreement therefore the Residential Tenancy Branch has no jurisdiction in deciding this matter.

With respect to the physical altercation, the Police were called and no charges were laid therefore it was up to the tenants and the Landlord to resolve the dispute. The Landlord spoke with the tenants and told them to get along. It appears that the tenants heeded the Landlords' advice as there were not more physical altercations between the tenants.

Further I accept the Landlord's testimony that they spoke with the other tenant about tampering with the Tenant's stored belongings and as the Tenant make no claims about loss or damage to her belongings; I find the Landlords met their responsibility to protect the Tenant's belongings in storage.

It is my finding that the Landlord made reasonable efforts and took actions that a responsible Landlord would take in dealing with two tenants that were not getting along. It is important to note that all parties are responsible in making tenancies work. From the testimony and evidence submitted I accept that both tenants caused issues in the dispute and both have responsibility for the disputes. The Tenant does not think the Landlord did enough to protect her quiet enjoyment of the unit but the Landlord was not the cause of the dispute between the tenants. I have reviewed the evidence and I have found no evidence that shows the Tenant tried to resolve any differences with the other tenant. The Tenant has put the full responsibility of the resolving the dispute on the Landlord. Consequently I find the Tenant has not proven the Landlord is sole responsible for the Tenant's loss of quiet enjoyment of the unit and the Tenant did not try to mitigate or minimize her loss. Further I find the Landlord did take reasonable action by speaking to the tenants about the issues and the results of the Landlord's words did reduce the disputes between the tenants. I find the Landlord has complied with the Act, regulations and tenancy agreement. Consequently I find the Tenant has not proven the Landlord is solely responsible for her perceived loss of quiet enjoyment

and I do not accept the Tenant's claim of \$4,999.99 as there is no evidence to justify the amount. The Tenant said she just picked that number.

I dismiss the Tenant's application without leave to reapply.

### Conclusion

The Tenant's application is dismissed without leave to reapply.

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: March 20, 2018

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Residential Tenancy Branch