



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MND, OLC, PSF

### Introduction

The tenant applies to cancel a ten day Notice to End Tenancy for unpaid rent, for an order that the landlords provide a service or facility, an order that the landlords comply with the law or the tenancy agreement and for a monetary award for damage or loss resulting from the landlords' alleged breach of the law or the tenancy agreement.

There has been a previous application involving these parties (related file number shown on cover page of this decision). The landlords applied by direct request and obtained an order of possession and a monetary award of \$1250.00 for unpaid rent dated March 16. The tenant has successfully applied for review of that *ex parte* application and the matter has been set for hearing May 30, 2018.

By the time of hearing the parties had ended their relationship and the tenant had moved out. There was some discussion about the events that occurred at the end of the tenancy, including an allegation that the landlords had wrongfully changed the locks early, denying the tenant access. Those matters, happening after this application was made, are not a proper subject for this hearing. The tenant is free to apply for relief in that regard, by making another application encompassing those matters.

As the tenancy is over, the questions of the validity of the ten day Notice, the awarding of an order regarding services or facilities or the awarding of an order that the landlords comply with the law or the tenancy agreement, are not matters requiring determination. Any award would be of no practical use. The sole issue remaining is the tenant's entitlement to a monetary award for the items referred to in the application. This was made clear at the start of the hearing.

All three 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

Have the landlords breached their statutory or contractual obligations to the tenant and has the tenant suffered damage as a result?

Background and Evidence

The rental unit is a one bedroom basement suite in the landlords' house. There is a second basement suite, rented to the landlord Ms. D.'s mother.

The tenancy started in mid-February 2018. The landlords state that they had intended to start the tenancy March 1 but tenant convinced them she needed a place right away and so they relented and gave her possession mid-February.

The monthly rent was \$1250.00, due on the 15<sup>th</sup> of each month. At the time of hearing the landlords held a \$625.00 security deposit.

The tenant testifies that the landlords harassed her from the very start. At the move-in they came down and entered her suite without her permission and took photos.

She says that over the brief period from mid-February to the first day of this hearing April 17, the landlords called the police about the tenant no less than seven times about noise coming from her suite. On March 14, the police showed up at 2:30 a.m. while the tenant was watching T.V. and scared her by shining lights into her suite.

She complains that a dishwasher she was promised did not arrive for a week and that the range on the stove did not work at the beginning of this tenancy. The landlords made a calculation and paid her for this loss of services but she has not accepted payment.

After she moved in the landlords informed her that it was a scent free house and she wasn't allowed to burn candles or incense in her suite, though, she says, a person at the Residential Tenancy office told her that it was her right to do so.

The tenant claims she had problems with the landlords about parking and use of the garage for storage, a facility she claims the landlords told her she could make use of.

On one occasion a friend of hers had her vehicle stuck in the snow in front of the house and the landlord Mr. P. sat in his vehicle and would not help.

The landlords have accused her of letting a girl friend live there and of keeping a pet, a lizard. They had accused her of being a drug dealer. They have accused her of not caring about their immuno-compromised son who lives with them. They have accused her of smoking or permitting smoking in her unit despite a provision prohibiting it in the tenancy agreement. She says she has asthma and does not smoke or permit it.

The landlords have accused her of bothering her basement neighbour by putting "water beads" and crickets under a door to the neighbouring suite.

She complains that the landlord Mr. P. showed up with a restoration man after a minor flood and demanded to come in even though she was not agreeable. She says the landlords turned the power off once, while she was in the bathroom.

She complains that the stove did not have a vent and the hood fan needed repair.

Shortly after she moved in the landlords installed security cameras to monitor her door.

She says the landlords slowed down the internet service that came with the suite and logged her out of it on occasion.

On one occasion the landlords bothered her while she was having a barbeque with friends.

Generally, the tenant says that everyday there was some form of harassment from the landlords, all in an effort to get her to move out. Indeed, she agreed to move out and has been trying to find a place.

In response Ms. D. testifies that while the tenant had told them she was a shift worker, she did not disclose that she stayed up all night.

The landlords had just bought the home in January and were unaware of how much noise travelled up from the tenant's suite. They tried to negotiate a 10:00 p.m. to 7:00 a.m. quiet time but it did not happen.

She acknowledges that the dishwasher hadn't arrived when the tenant started early, but was explained to and agreed to with the tenant and it arrived quickly. The range was

new and when she heard it was not working she acted quickly to inspect it and provide a working range.

The landlord Ms. D. denies that the landlords ever entered the suite without permission or notice. She says the security system had been ordered before the tenant ever came on the scene. It arrived late February and was installed. It was not put in so as to monitor the tenant.

She says the tenant insisted on burning incense and that it could be smelled strongly upstairs. In her view the smell posed a risk to the health of her unwell son. She alleges that one time the incense smell cause her son to go into respiratory distress.

Shortly after the tenant moved in Ms. D. was disturbed at about 2:30 in the morning by the tenant and her friends installing racks on the walls of the suite using power tools.

She says on at least one occasion the tenant's friends parked blocking access to the garage, causing acrimony between the parties.

Ms. D. testifies that it became clear the tenant was a night owl. She told the tenant she could break her lease and leave and it would be acceptable to the landlords.

Ms. D. complains that the tenant had many short-stay visitors carrying duffels and attaché cases and that's what led her to believe the tenant was dealing drugs. On occasion the visitors would knock on the landlords' door and be redirected to the tenant's basement suite. On one occasion they observed a guest of the tenant's being chased by the police in front of the house.

She states that when the landlords were disturbed during the night by noise from below they would call the police.

She thinks the tenant shot a pellet gun into the interior walls of the suite.

Despite the tenancy agreement prohibiting any smoking on the property, she has seen the tenant's guests smoking outside the door and has found cigarette burns on the door frame. A text from the tenant acknowledges that she will have a guest stop smoking outside her door.

On one occasion her mother, who lives in the neighbouring basement suite, found small beads on her floor. They had run under the door to a laundry room shared with the

tenant. She thinks the tenant rolled them into the suite. Shortly after, her mother called her about finding 25 to 30 crickets in her suite. The tenant had been seen to have a large pet lizard in her suite. Ms. D.'s opinion is that the crickets were lizard food and that the tenant released them into her mother's suite on purpose.

As a result, in mid-March the landlords gave notice to terminate the laundry service in thirty days and offered to compensate the tenant the amount of \$90.00 per month. The tenancy barely survived another month. It is not clear that laundry services were ever actually terminated.

Ms. D. denies changing the internet. She merely changed the landlords' password.

In rebuttal the tenant says she tried to accommodate the landlords by installing some soundproofing in the ceiling vents in her suite.

She denies burning incense. She says she had a "Febreze plug-in" that she took out once the landlords complained. She denies keeping a pet, saying the large lizard belonged to a friend. She denies having drug involvement.

She says she called the police once because the landlords were fighting.

Also in rebuttal, the tenant called her friend Ms. M.K. who testified about getting stuck in the snow and that the lizard was hers. She says she does not feed the lizard crickets. She testifies that she and the tenant watched a movie one night with subtitles on and sound off.

The tenant also called Mr. S.F., her employer for three years. He testifies about the tenant calling him one night distraught about someone knocking on her door and flashing a light through the window. He came over. As it turned out, it was the police.

He gives his opinion about the soundproofing requirements for basement suites.

### Analysis

The application before me is the tenant's claim, not the landlords'. So far as the landlords' indication that they were disturbed and harassed by the tenant's conduct, that is not an issue before me.

It is apparent that the tenant came into the tenancy with the view that the basement suite was to be her home, in which she could have privacy and carry on her day to day

life, having friends over, watching television, playing music, . . .etc., without the intrusion of her landlords. I'm sure that the tenant thought that the fact that she was on shift work and stayed awake late into the night was her business, not the landlords."

It is apparent that the landlords expected their new tenant to be single person who would be what they considered to be respectful of the relatively close quarters the parties shared. They had the expectation that the tenant would work days, like most people and that she would sleep at night, not do laundry or have friends over or watch television. Further, they expected the tenant to adjust her conduct in light of the fact that one of their children was ill, a circumstance not apparently discussed before the parties entered into this tenancy.

I have reviewed the evidence carefully and I conclude that each of the incidents raised by the tenant relate to the foregoing misunderstandings between the parties. They are either directly caused by the basic conflict over day vs. night activities.

I find that by and large the landlords conducted themselves properly in the face of disagreement over the various issues that arose. For example, they attempted to resolve the late night laundry issue by setting out hours of use. When that did not work they removed the laundry facility from the tenancy and proposed to pay compensation as per the *Residential Tenancy Act*. When the noise problems became what they considered excessive, they called the police.

Each side in this tenancy considers they were interfered with and disturbed by the other, from their point of view. However, looking at the matter objectively, I conclude that none of the landlords' actions raised by the tenant in her application warrant the imposition of an award of damages. Each was a not unreasonable response to a perceived problem.

The landlords were not required to disclose a "quiet time" at the start of this tenancy. It was taken for granted that the tenant would not be up and around her suite during the late evening or night. If she was, it would have been fair to assume that she would take care not to disturb the occupants upstairs. It would have been plain to see that the rental unit was merely a suite in the basement of a house and that sound would travel more easily than in, say, a purpose built apartment in an apartment building.

I consider it most likely that the water beads and crickets came from the tenant's side of the laundry room, though I do not ascribe any bad intention to the tenant. Given that occurrence and the late night laundry usage, the landlords' actions in attempting to define hours of usage and then restrict it, were not unreasonable.

It is apparent that the landlords were expecting a dishwasher after the tenant moved in and the tenant rented the unit on that basis. The (new) range did not work properly and in my view the landlords' attended to their obligations to remedy the problem in a timely manner.

While it would have been the neighbourly thing to do, the landlord Mr. D. was under no obligation to assist the tenant's friend in freeing her vehicle from the snow in the driveway.

I am satisfied that the cameras installed by the landlords were a system intended for the premises even before the tenant came to rent and that they were not installed specifically for the purpose of monitoring her activity.

The matters of the tenant's complaint about the stove vent and hood fan do not appear as part of the tenant's written application. In any event there is little indication about the nature and extent of any problem or of notification or failure to repair on the landlords' part, to provide any basis to grant monetary relief.

I am not satisfied that the landlord Mr. D. or his workman made a wrongful entry into the suite at any time, nor am I satisfied that the landlords degraded or restricted the tenant's internet access.

#### Conclusion

For the foregoing reasons the tenant's application for damages against the landlords must be dismissed.

Last, I apologize to the parties for the lateness in providing this decision.

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: May 09, 2018

---

Residential Tenancy Branch