



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR DR FF MNDCT OLC OPT PSF

### Preliminary Issue – Adjournment of October 10, 2018 & Direct Request of November 5, 2018

This participatory hearing was convened after the issuance of an October 10, 2018 Interim Decision of an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlord. The Adjudicator reconvened the landlord's application to be heard before an Arbitrator to determine the merits of the 10 Day Notice to End Tenancy dated September 6, 2018.

On November 5, 2018 the landlord was granted an Order of Possession and a monetary award of \$1,280.00 by way of Direct Request Proceeding following the issuance of a 10 Day Notice to End Tenancy dated October 16, 2018.

The landlord's application for an Order of Possession and a monetary award, along with the tenant's application to cancel the landlord's 10 Day Notice dated September 6, 2018 was conclusively decided by way of Direct Request prior to today's hearing (November 9, 2018) and an Order of Possession and monetary award were granted to the landlord on November 5, 2018. I find I am bound by this decision and decline to consider these portions of the applications before me.

### Issues to be Decided

Is the tenant entitled to a monetary award?

### Background and Evidence

The tenant testified this tenancy began on December 15, 2017. Rent was \$1,180.00 per month and a single pet and security deposit of \$550.00 paid at the outset of the tenancy continue to be held by the landlord.

The tenant said she was seeking a monetary award of \$8,228.65 as follows:

ITEM	AMOUNT
Loss of Wages (153 hrs x 13.50)	\$2,065.50
Rent for son to live elsewhere	900.00
2 Month's rent	2,360.00
Laundry receipts	133.15
Reduced Rent for loss of Services	1,770.00
Aggravated Damages	1,000.00
<b>TOTAL =</b>	<b>\$8,228.65</b>

The tenant explained that she and the landlord had a fractured relationship and described the alleged harassment to which she was subject from the landlord. The tenant said the stress of dealing with various tenancy issues had caused her to miss a significant amount of work and she therefore sought compensation from the landlord for these missed wages. The tenant continued by describing stress that was also experienced by her son, who she said was forced to live elsewhere for a portion of July and August 2018. The tenant sought return of \$900.00 representing a portion of the rent which she identified as \$600.00 per month.

The tenant said she was seeking \$2,360.00 in return of rent because of numerous issues related to the tenancy. Specifically, the tenant alleged the landlord withheld her mail, turned the stove off and changed the locks to the laundry without her authorization. The tenant argued she had been "mislead" numerous times by the landlord and had been subject to several instances of harassment. The landlord called her son, D.I. as a witness. D.I. described accusations of drug dealing he had been subject to from the landlord, incidents of alleged violence and intimidation, and an overall sense of anxiety he felt in the rental unit.

The final portions of the tenant's application for a monetary award concerned a return of \$133.15 for laundry which was no longer accessible, reduced rent for loss of services at \$1,770.00 and aggravated damages of \$1,000.00. In support of this claim for damages, the tenant repeated many of her earlier arguments as they related to her application for a monetary award. She detailed several incidents of landlord harassment in the form of repeated phone calls, allegations concerning drug use and sale by her or her family members, parking and storage charges of \$150 and \$50 per day being levied against her in the midst of her tenancy, numerous cameras on the property recording her movements and the landlord's entry to her rental unit on several occasions without prior notice.

The landlord disputed all portions of the tenant's application. The landlord argued the tenant was seeking unjust enrichment and he accused the tenant and her son of fabricating their testimony. The landlord said he had repaired all items which the tenant had alleged were broken and he denied preventing access to the laundry. The landlord disputed that any money was due to for lost wages, explaining the tenant's missed work was not a result of his actions. The landlord largely agreed that the parties had a fractured relationship and detailed alleged harassment on the part of witness D.I. The landlord argued D.I. had unnecessarily interfered with his day to day landlord duties and had subject the landlord to numerous racist remarks. The tenant denied these actions.

### Analysis

The tenant has applied for a monetary award of \$8,228.65. This figure represents a loss of wages due to the stress of dealing with her tenancy issue, partial payment of rent for her son's unit, a return of rent from a loss of quiet enjoyment, payments associated with off-site laundry and compensation for aggravated damages as outlined above.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of 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 her entitlement to a claim for a monetary award.

Section 28 of the *Act* states as follows, "A tenant is entitled to quiet enjoyment, including, but not limited to reasonable privacy, freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 and use of the common areas for reasonable and lawful purposes, free from significant interference." While *Residential Tenancy Policy Guideline #6* states, "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."

The issue of compensation as it relates to the tenant's application is examined further by *Policy Guideline #16* which says; "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 where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must be specifically asked for in the application."

The evidence and testimony of both parties indicate a breakdown in the relationship between the parties. I find significant evidence was presented by the tenant that she had been subject to frequent and ongoing breaches of her quiet enjoyment from the landlord and I find sufficient evidence was presented that the landlord breached the quiet enjoyment of the tenant. Specifically, I find the landlord's repeated phone calls to the tenant as evidence of his harassment of her. Furthermore, I found the tenant to be a credible witness who could accurately recall instances when the landlord entered her suite without permission or notice, and recorded her and her family on video without their consent. The testimony of her witness, D.I. corroborated the tenant's accounts and the landlord offered little evidence to rebut their accounts other than to accuse the parties of lying. The tenant and her witnesses accounts were supplemented by a series of text messages and phone logs in which the landlord had accused them of selling marijuana, had repeatedly calling them in the evening, actions on his part which went beyond temporary discomfort or inconvenience. I find these actions were significant and deliberate and I therefore award the tenant aggravated damages as requested in the amount of \$1,000.00. I also award the tenant \$133.15 for a loss of laundry as a text messages supplied by the tenant in evidence confirmed her account that the landlord had agreed to pay for this loss of service.

After reviewing the application and evidence in its entirety, and having considered the testimony of both parties, I find that the tenant has failed to demonstrate entitlement to a large portion of her desired monetary award. Many of the elements for which the tenant seeks compensation do not relate to the landlord's actions and fall beyond the scope of section 67 of the *Act* which empowers me to award compensation for the existence of the damage/loss, stemming directly from a violation of the agreement or a contravention of the *Act* on the part of the landlord. In this case, I find the tenant's application for a return of lost wages and her son's rental of an apartment to be outside the parameters of section 67 of the *Act* because they do not arise from a violation of the tenancy agreement or *Act*. Furthermore, I find her application for a return of 2 month's rent,

along with lost rent for reduced services to be based on many of the same arguments regarding why compensation may be due.

### Conclusion

Pursuant to sections 67 and 72 of the *Act*, I grant the tenant a monetary award in the amount of \$1,133.15. The tenant is provided with this 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: November 14, 2018

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Residential Tenancy Branch