



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Rei-Mar Investments Ltd..  
And [tenant suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with the Tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- A Monetary Order for Damage Or Compensation pursuant to section 67; and
- Authorization to recover the filing fee from the Landlord, pursuant to section 72.

Tenant J.S. attended on behalf of both tenants (the "Tenants"). Agent A.L. attended for the landlords (the "Landlords"). Both parties were given a full opportunity to be heard, to present their affirmed testimony and evidence. Both parties confirmed receipt of the other's evidentiary submissions for this hearing. No issues of service were raised by the parties.

### Issue(s) to be Decided

- Are the Tenants' entitled to a monetary award for damages or loss under the Act
- Are Tenants entitled to recover the filing free from the Landlords?

### Background and Evidence

The parties agree that the tenancy started on May 3, 2011; with current rent due on the first of the month, in the amount \$1,879.00.

The Tenants testified that they seek a monetary order from the Landlords in the amount \$1,879.00 plus their filing fee. The Tenants contend that they suffered a loss of quiet enjoyment resulting from the Landlords' issuance of repeated Two Month Notices to End Tenancy (the "notice(s)") over a span of four years. Four separated notices were disputed at Residential Tenancy Branch (RTB) and were cancelled by Arbitration.

The parties have been involved in 5 hearings before the Residential Tenancy Branch. The first hearing took place October 2013 and is unrelated to this matter.

The notices issued Dec 26, 2013, Feb 24, 2014, Jan 23, 2018 and March 13, 2018 were unsuccessful for various reasons outlined in the chart below. The Tenants submitted in evidence previous decision numbers reference in the cover page of this decision.

Hearing Date	Claim	Outcome
19-Feb-14	Tenants' application to cancel a Two Month Notice to End Tenancy issued Dec 26, 2014 - Tenant claims notice issued in bad faith; recovery of filing fee.	Notice cancelled as Landlord failed to establish claim of a "close family member". (Grandchild). Filing fees awarded to Tenant.
02-Apr-14	Tenants' application to cancel a Two Month Notice to End Tenancy issued Feb 24, 2014; Monetary order for compensation or loss; recovery of filing fee.	Notice cancelled as notice identified wrong Landlord (an individual rather than a corporation) and failed to establish claim of a "close family member" for the family corporation. Tenant's monetary claim dismissed. Filing fees awarded to Tenant.
13-Mar-18	Tenant's application to cancel a Two Month Notice for Landlord's use issued Jan 23, 2018; recovery of filing fees	The Landlord's agent could not establish the connection between the close family member and the corporation who was going to occupy. Notice cancelled. Filing fees awarded to Tenant
05-Jun-18	Tenant's application to cancel a Two Month Notice for Landlord's use issued March 13, 2018; recovery of filing fees	Tenant's request to cancel Two Month notice granted; monetary request dismissed with leave to reapply; filing fee granted. Landlord withdrew notice as prospective tenant found alternate accommodation. <b>Arbitrator issues order for Landlord to comply with the Act.</b>

It is the Tenants' position that the Landlords' failure to comply with the Act, by issuing repeated defective notices naming the wrong Landlords and/or wrong reasons to end the tenancy, caused them to incur a loss, endure pain and suffering, harassment and

loss of quiet enjoyment. The Tenants seek a monetary award equal to one month's rent in the amount of \$1,879.00 for loss of quiet enjoyment.

The Landlords testified that they made various errors when issuing the Notices and pointed to the decision dated March 13, 2018 where the Arbitrator states under Background and Evidence that:

“The landlord’s agent provided undisputed affirmed testimony that the landlord was a corporation in which one of the owner’s close family member (daughter) intends in good faith to occupy the rental unit” and that the Arbitrator found that “the Landlord had inadvertently selected the incorrect reason for the notice”

The Landlords add that they had no intention to unnecessarily prolong the end of tenancy procedure, and that a lot of time transpired, as a result of the Tenant disputing the notices. The Landlords further testified that both the Landlord and Tenant are at liberty to issue other notices to end the tenancy under the Act.

### Analysis

Rules of Procedure 6.6 states:

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

In this case the Tenants have the burden of proof.

Section 7 of the Act states:

- **a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss;**
- and the party who claims compensation must do whatever is reasonable to minimize the damage or loss. **[emphasis added]**

I accept the Tenants’ argument that the issuance of defective notices caused them distress and uncertainty.

The Tenants are seeking a monetary award for loss of quiet enjoyment. In order for me to award the tenants with a monetary order they must prove that they suffered a loss of

quiet enjoyment as a result of the Landlords' actions which breached section 67 of the Act.

The Residential Tenancy Branch Policy Guideline 16 provides guidance on determining the type of damage or loss:

"Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- loss of access to any part of the residential property provided under a tenancy agreement;
- loss of a service or facility provided under a tenancy agreement;
- **loss of quiet enjoyment** (see Policy Guideline 6);
- loss of rental income that was to be received under a tenancy agreement and costs associated; and
- damage to a person, including both physical and mental.

Policy Guideline 6. Provides guidance on a tenants' entitlement to quiet enjoyment:

Under section 28 of Act, 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.

The basis for finding of breach of quiet enjoyment under Policy Guideline 6:

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. **[emphasis added]**

I find the Tenants have failed to meet the burden of proof and failed to demonstrate that the Landlords' four notices, amount to **substantial interference with the ordinary and**

**lawful enjoyment** of the premises. **The temporary discomfort or inconvenience** of dealing with four notices (for two incidents) over a span of four years, does not constitute a basis for a breach of the entitlement to quiet enjoyment. Consequently, I dismiss the Tenant's application for compensation and recovery of the filing fee.

I accept the Landlords' testimony that they made inadvertent errors in issuing the various notices that failed to name and establish the correct Landlords and close family members in the notices issued in 2013, 2014 and 2018. The notices issued in 2014 were for one family member (grandchild) and are unrelated to the notices issued in 2018 for a different family member (daughter).

While the Landlords issued these notices to end tenancy, that were later found to be deficient, the Landlords have the right to end the tenancy for reasons allowed under the Act. As such, I find the Landlords cannot be found to be breaching the Act when they are attempting to enforce their rights as allowed under the Act.

### Conclusion

I dismiss the Tenants' application for a monetary award of \$1,879.00 without leave to reapply.

As the Tenants were unsuccessful in their application, they must bear the cost of their own filing fee.

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 18, 2018

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Residential Tenancy Branch