



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to an Application for Dispute Resolution (the “Amendment”) that were filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- Compensation for loss or other money owed;
- Aggravated damages; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Tenant, the Landlord, and the agent for the Landlord (the “Agent”), all of who provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be sent to them in the manner requested during the hearing.

### Preliminary Matters

#### **Preliminary Matter # 1**

Although the Landlord and Agent raised no objection regarding service or receipt of the Application, Amendment, or the Notice of hearing, they testified that they did not receive all of the documentary evidence purported to have been served by the Tenant in the hearing. Specifically they stated that they did not receive the second page of a two page document set allegedly served on the Landlord by the Tenant on October 5, 2018, by registered mail. The Landlord and Agent acknowledged receipt of only the first page of the two-page typed document set by regular mail on October 11, 2018, which contained some hearing information and a statement that the Tenant’s address for service had changed as well as

the new address for service. However, they denied receipt of the second page which appears to simply be a restatement of the Tenant's new address for service of documentation in relation to the hearing.

As the Landlord and Agent denied receipt of the second page, and the Tenant could not provide registered mail tracking information for this document set, I have excluded the second page of the document set from consideration in this matter in the interest of procedural fairness. However, I find it important to note that the information contained in the document excluded from consideration is already contained within a document the Landlord and Agent confirmed was received. As a result, there is no material impact on the parties or the findings of fact I must make in this hearing as a result of this exclusion.

In addition to the above, the Tenant raised a concern about the service and receipt of the Landlord's documentary evidence. The Landlord and Agent testified that their 67 page document set was first sent by registered mail to the Tenant's forwarding address, but was returned. As a result the Agent stated that it was personally served on the Tenant's roommate on October 15, 2018, at 1:30 P.M. Although the Tenant did not dispute the receipt of this document set by his roommate on October 15, 2018, he testified that this did not leave him with sufficient time to review and respond fully and appropriately to the Landlord's evidence. Despite the foregoing, the Tenant did not raise any arguments that he had new and relevant evidence for consideration in response to the Landlord's evidence pursuant to rule 3.17 of the Rules of Procedure or request any other remedy under the *Act* or the Rules of Procedure.

While I appreciate the Tenant's belief that they did not have sufficient time to read and respond to the Landlord's evidence, the Rules of Procedure provide specific timelines for the service of evidence from the Applicant on the Respondent and the timelines for the Respondent to provide their own evidence in response to that of the Applicant. Rule 3.15 of the Rules of Procedure states that the Respondent, who is the Landlord in this matter, must ensure that evidence they intend to rely on at the hearing is received by the Tenant not less than seven days before the hearing. The Rules of Procedure do not provide any additional requirements for the Applicant, who is the Tenant in this matter, to respond to this evidence as the evidence they intend to rely on at the hearing is required to have been served on the other party at least 14 days before the hearing pursuant to rule 3.14 of the Rules of Procedure.

As the hearing was scheduled for November 8, 2018, and the Tenant acknowledged that his roommate received the Landlord's evidence on October 15, 2018, which complies with the service requirements of section 88 (e) of the *Act*, I find that the Landlord's evidence was therefore served on the Tenant in compliance with *Act* and section 3.15 of the Rules of Procedure. As a result, I therefore accepted the Landlord's evidence for consideration in

this matter and advised the Tenant that he is welcome to provide testimony or call witnesses in response to the Landlord's evidence during the hearing.

### **Preliminary Matter #2**

In reviewing the Tenant's Application and Amendment, I noted that the Tenant sought \$512.50 in compensation for rent paid for January of 2018 in the Application, plus recovery of the \$100.00 filing fee, and \$35,000.00 in aggravated damages in the Amendment. In total, the Tenant's claim amounted to \$35,512.50, plus recovery of the \$100.00 filing fee.

I advised the Tenant that in accordance with section 58 of the *Act* the Residential Tenancy Branch (the "Branch") does not have jurisdiction over claims exceeding the amount of the monetary limit for claims under the *Small Claims Act*, which is \$35,000.00. Further to this, I advised the Tenant that section 2.9 of the Rules of Procedure states that an applicant may not divide a claim, which means that the Tenant cannot simply sever or split his claim into separate applications in order to avoid the \$35,000.00 monetary limit to the Branch's jurisdiction.

Based on the above, the Tenant voluntarily withdrew his Application seeking \$512.00 in rent for January of 2018, and requested to proceed based only on the \$35,000.00 monetary claim for aggravated damages, plus recovery of the \$100.00 filing fee. I advised the Tenant that he is welcome to proceed with his full claim in the appropriate court of competent jurisdiction but only if he chooses not to reduce his claim in order to have it heard by the Branch. I also advised him that if he reduces the total amount of his claim, he cannot come back at a later date with the remaining claims withdrawn pursuant to rule 2.9 of the Rules of Procedure. The Tenant stated that he fully understood and wished to proceed only with his \$35,000.00 monetary claim knowing that he could not later pursue the \$512.50 in claims withdrawn.

Based on the above, I amended the Application pursuant to the *Act* and the Rules of Procedure and the hearing therefore proceeded based only on the Tenant's claim for \$35,000.00 in aggravated damages, plus recovery of the \$100.00 filing fee.

### Issue(s) to be Decided

Is the Tenant entitled to monetary compensation for aggravated damages?

### Background and Evidence

The tenancy agreement in the documentary evidence before me states that the fixed term tenancy with an end date of June 30, 2018, commenced on July 1, 2017, and that rent in

the amount of \$1,000.00 was due on the first day of each month. In the hearing the parties agreed that the Tenant gave notice to end his tenancy and that the tenancy subsequently ended on January 15, 2018.

The Tenant testified that he suffered six and half months of constant harassment from the Landlord, agents of the Landlord and other occupants of the rental building during his tenancy for which he is entitled to \$35,000.00 in compensation. The Tenant stated that other occupants of the rental building intentionally caused excessive and unreasonable noise to disturb him, sprayed toxic gas into his rental unit either on their own accord or at the express direction from the Landlord, and used electronic devices and machinery causing noise and pressure waves in his rental unit which impacted his heart, breathing, and overall health. The Tenant stated that the Landlord advised him not to make further complaints and to "just move out", and that the Landlord and agents had people threaten and harass him in public places such as coffee shops and supermarkets around the community.

The Tenant stated that he has filled many complaints with the Landlord and Agent regarding these issues and that the Landlord has failed to address them or to enforce his right to quiet enjoyment under the *Act* including, but not limited to, his right to reasonable privacy and freedom from unreasonable disturbance. Further to this the Tenant stated that the Landlord had someone honk a car horn and flash the car lights into his rental unit every time he moved within the unit, that they installed surveillance and monitoring equipment on his fridge without his consent, that they contacted other building owners and Landlords in the surrounding communities warning them not to rent to him and that the Landlord colluded with the police and doctors to have him hospitalized against his will for 14 days. The Tenant also stated that the Landlord and Agent have maliciously defamed his character through slandered and libel.

When asked how the Tenant arrived at the \$35,000.00 amount claimed by him for aggravated damages, the Tenant stated only that it is the amount that is "legally right". In support of his testimony the Tenant provided significant documentary evidence, which consisted predominantly of self-authored written statements, complaints and summaries of events, as well as a copy of the tenancy agreement, rental building rules, a parking agreement, and a photograph of a cassette recorder.

The Agent and Landlord categorically denied the Tenant's allegations on all accounts. Specifically they denied having ever told the Tenant not to make complaints stating that they have no animosity towards the Tenant and have in fact diligently investigated all of the Tenant's complaints, which have been unfounded. The Landlord and Agent also stated that they never advised the Tenant that he needed to move out but did make every attempt to assist the Tenant in reaching resolution by offering to move him to a different unit within the

building and ultimately allowing him to end his fixed-term tenancy early and without penalty upon his request. Further to this, the Landlord and Agent stated that the new occupant of the Tenant's rental unit has not experienced any of the Tenant's complaints despite the fact that the other occupants of the building have remained the same. The Landlord and Agent also denied any involvement in the Tenant's hospitalization stating that neither the Tenant's doctor nor the police were contacted by them and were in fact involved in the Tenant's hospitalization due to the Tenant's own actions.

Based on the above, the Agent and Landlord stated that they have not breached any of the Tenant's rights under the *Act*, the regulation, or the tenancy agreement and that the Landlord is not responsible to pay the Tenant any of the compensation sought. In support of their testimony they provided, among other things, copies of the Tenant's written complaints, e-mail correspondence regarding the receipt and investigation of several of the Tenant's complaints, notices of entry for reasonable and lawful purposes and a letter from another occupant of the building denying the allegations made against them by the Tenant.

### Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights 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 [*landlord's right to enter rental unit restricted*], and use of common areas for reasonable and lawful purposes, free from significant interference.

Section 7 of the *Act* states that if a landlord or tenant does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. It also states that landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Policy Guideline (the "Policy Guideline") #16 states that 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, and damage to a person, including both physical and mental. It also states that aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence and where intangible damage or loss has occurred which cannot be fully compensated by an award for damage or loss with respect to property, money or services. However, Policy Guideline #16 also states that aggravated damages are rarely awarded.

In addition to the above, Policy Guideline #16 states that the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred and sets out a four-part test as follows for determining whether compensation is due:

- Did a party to the tenancy agreement fail to comply with the *Act*, regulation or tenancy agreement?
- Did loss or damage result from this non-compliance?
- Did the party who suffered the damage or loss prove the amount of or value of the damage or loss? and
- Did the party who suffered the damage or loss act reasonably to minimize that damage or loss?

Rule 6.6 of the Rules of procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that the onus to prove their case is on the person making the claim. As a result, I find that it is incumbent upon the Tenant in this matter to satisfy me, on a balance of probabilities, that the Landlord failed to comply with the *Act*, regulation or the tenancy agreement, that a loss resulted from this non-compliance, the value of this loss, and that he acted reasonably to minimize the loss suffered in order to be awarded any compensation.

Although both parties provided significant affirmed testimony in the hearing, the parties ultimately disagreed about whether the Landlord had in fact breached any of the Tenant's rights under the *Act*, regulation, or tenancy agreement, including but not limited to section 28 of the *Act*, and whether the Tenant was therefore entitled to any compensation. Both parties also submitted significant documentary evidence in support of their testimony. Given the conflicting affirmed testimony of the parties, I therefore turned my mind to the documentary evidence before me from the parties in order to determine whether I was satisfied, on a balance of probabilities, by the Tenant, of the claims made by him for aggravated damages.

While much of the documentary evidence submitted by the Landlord and Agent related to claims withdrawn by the Tenant, the Landlord and Agent did submit documentary evidence in the form of e-mail correspondence between them regarding the receipt and investigation of several of the Tenant's complaints and a letter from another occupant of the building denying the allegations made against them by the Tenant.

In turning to the Tenant's documentary evidence I note that the vast majority of his documentary evidence is actually a compilation of his own written statements, complaints and summaries of events. Although these summaries, complaints, and statements appear to be thorough, they are entirely unsupported by any form of independent corroborating

evidence not authored by the Tenant himself upon which I could reasonably and objectively conclude that these summaries, complaints, and statements are accurate and reliable. Further to this, the Tenant provided no testimony, documentary, or other evidence to support how he arrived at the \$35,000.00 value he has attributed to his claims.

Based on the above, I therefore find that the Tenant has failed to satisfy me, on a balance of probabilities, that the Landlord breached the *Act*, regulation, or tenancy agreement resulting in a loss, or the value of any such loss allegedly suffered. I therefore dismiss the Tenant's Application seeking \$35,000.00 in aggravated damages without leave to reapply. As the Tenant was unsuccessful in his Application, I find that he must bear the cost of his own filing fee.

### Conclusion

The Tenant's Application and Amendment are dismissed, in their entirety, 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: December 6, 2018

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Residential Tenancy Branch