



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT MNDCT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional fifteen minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on July 8, 2019 and deemed received by the landlord under section 90 of the *Act* five days later, that is, on July 13, 2019.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the

landlord with the Notice of Hearing and Application for Dispute Resolution on July 13, 2019

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The tenant provided uncontradicted affirmed testimony concerning the background of the tenancy and the events leading up to this Application.

The tenant stated she rented from the landlord a bedroom in an apartment; two other bedrooms were similarly rented and the occupants of all three bedrooms shared a bathroom and kitchen. The tenant moved in November 18, 2018 and moved out March 31, 2019.

The landlord was frequently away for work and the landlord's mother looked after the apartment. When the landlord was in town, the landlord slept in a separate unit in the building.

As soon as the tenant moved in, she became aware of a smell of skunks. She immediately discussed the smell with the other occupants and with the landlord's mother. The tenant learned that the skunks had been living under the building for some time and were residing in heating/air vents. The landlord acknowledged the presence of the skunks in a text to the tenant dated January 14, 2019; a copy of the text was submitted by the tenant. The tenant discussed what to do about the problem with the landlord and his mother; the landlord promised to remedy the situation right away. In an effort to repel the skunks, the tenant purchased a device which proved ineffective; the landlord reimbursed the tenant for the cost.

The tenant followed up her verbal complaints about the smell with a letter dated February 12, 2019, a copy of which was submitted by the tenant. The letter started in part as follows:

I am writing this to formally request a reimbursement of rent from the period of November 18, 2018 to February 28, 2019.... of \$150/month.

Just after having moved in, I was made aware of skunks living somewhere under the house by your mother, KL, and presenting themselves with noises under my bedroom around 4 am.

I met you, my landlord, shortly after moving in. I was assured that there was a trap set up (which there was), and that it would soon be taken care of. ...

Over the next few months, the skunk issue has gotten worse..... It has also come to my attention in the last few days from R, who is helping with the pest removal, that there are tunnels underneath the house

The skunks have been waking me up at 4am nearly every morning that I am in the house, and I spend half of my time away at my partner's house. Part of this time away is desired and my own choice, and part of the time is because I just want to have a good night's sleep in a room that does not smell like skunk.

My bedroom has had the lingering scent of skunk since I move in, and it is getting worse... making my eyes water A loud raucous noise can be heard...

[tenant then described that her clothing and her car smelled like skunk.]

The tenant stated that she was informed that eight skunks were removed from underneath the unit after she left.

The tenant requested reimbursement of \$150.00 a month for the 3.5 months of occupancy as well as reimbursement of the filing fee as follows:

ITEM	AMOUNT
Rent reimbursement (\$150.00 x 3.5) – loss of quiet enjoyment	\$525.00
Reimbursement of the filing fee	\$100.00
Total Monetary Award Requested	\$625.00

Analysis

The tenant's claim is for loss of quiet enjoyment for 3.5 months, the time she occupied the unit, at a rate of \$150.00 a month for a total claim of \$525.00.

Loss of quiet enjoyment

- Section 28 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;*
- (b) freedom from unreasonable disturbance;*
- (c) 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];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment states as follows:

*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.

...

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).

(emphasis added)

I find the tenant was credible, articulate and clear about the substantial interference with her quiet enjoyment caused by the skunks living beneath the unit. I accept her uncontradicted evidence that the smell and noise were unbearable, requiring her to often sleep elsewhere. I accept her evidence and find that the landlord and his mother were aware of the problem but failed to take effective action during the tenancy to remedy the situation.

I find the tenant was understandably genuinely disturbed and inconvenienced by the landlord's breach of his obligations under the tenancy agreement to provide quiet enjoyment to the tenant.

I also find the tenant took all reasonable steps to reduce the inconvenience, by buying a monitor that she thought would eliminate the problem. She also stayed elsewhere to get a full night's sleep. She conveyed her concern to the landlord in text and email.

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In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

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.

I find it is reasonable to place a monetary value on the tenant's loss of quiet enjoyment for the 3.5 months of occupancy at \$150.00 a month as requested by the tenant.

I accordingly find the tenant has met the burden of proof on a balance of probabilities that she suffered a loss of quiet enjoyment as claimed. In considering all the evidence and testimony, I find it reasonable to award the tenant the sum of \$525.00.

As the tenant has been successful in this application, the tenant is entitled to recover \$100.00 paid for the filing fee.

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I therefore grant the tenant a monetary award of \$625.00 as follows:

ITEM	AMOUNT
Rent reimbursement (\$150.00 x 3.5), loss of quiet enjoyment	\$525.00
Reimbursement of the filing fee	\$100.00
Total Monetary Award	\$625.00

Conclusion

The tenant is granted a monetary order in the amount of **\$625.00**.

The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the 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: August 29, 2019

Residential Tenancy Branch