



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC CNR LAT LRE OLC MNDC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on December 10, 2019. The Tenant applied for multiple remedies pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant attended the teleconference hearing; however, the Landlord did not. The Tenant provided testimony at the hearing. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

The Tenant testified that she sent the Landlord her application package and evidence on October 24, 2019, by registered mail, to the Landlord's residence. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received this package on October 29, 2019, the fifth day after its registered mailing.

The Tenant testified that she sent the Landlord her first amendment on November 6, 2019, by registered mail, and her second amendment on November 19, 2019, also by registered mail. The Tenant provided tracking information into evidence. Pursuant to section 88 and 90 of the Act, I find the Landlord is deemed to have received these packages on November 11, 2019, and November 24, 2019, respectively, the fifth day after their registered mailing.

The Tenant moved out after she first filed her application, which is why she filed her amendments. The Tenant's most recent amendment outlines that she does not require any of the grounds she selected previously, except for an application for monetary

compensation in the amount of \$750.00 for loss of quiet enjoyment. The Tenant's application is hereby amended and updated accordingly.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?

#### Background and Evidence

The Tenant stated that she only lived in the rental unit for around 5 months, from July 15, 2019, until November 30, 2019. The Tenant stated that there was no written tenancy agreement, but the agreement was that she pay \$1,500.00 per month on the first of the month. The Tenant stated that she paid a security deposit in the amount of \$750.00. The Tenant stated that she is seeking \$750.00 in monetary compensation which she calculated by asking for a 10% rent reduction for the 5 months she lived in the unit. The Tenant stated she is seeking this 10% (\$150.00) each month for her loss of quiet enjoyment due to the Landlords actions. The Tenant stated she had exclusive access to her yard, since the Landlord had her own separate area for her use of the carriage house.

During the hearing, the Tenant spoke to the issues she was having and she highlighted that things started to go sideways in mid September, when the Landlord borrowed her ladder without permission. The Tenant stated that she communicated largely by text message leading up to September 2019, and when things started to get hostile and contentious, she asked for the Landlord to put things in written form and not text message. The Tenant made this request to the Landlord on September 30, 2019. The Tenant presented many of her text messages as proof of the types of communications she had with the Landlord.

The Tenant pointed to her text messages to show that the Landlord took her ladder on September 4, 2019, without permission, and did not return it for over a week. The Tenant stated that during September, the Landlord gave the Tenant a text message warning that she would be coming to the house for several different maintenance

related items. The Tenant stated that the Landlord sent a few text messages asking for entry, then didn't show up, then she would show up more than a day after she said she would. The Tenant stated she would make arrangements to be available and to accommodate the Landlord's entry, but the times and dates would change. The Tenant also stated that the Landlord would not always be forthcoming with the reasons she needed access or accurate with the times.

The Tenant stated that sometime towards the end of September, the Landlord reported her to child welfare and they came and did a site visit because the Landlord took issue with the Tenant's son being left alone. The Tenant also pointed to a text message from the Landlord whereby the Landlord stated the following:

By the way, is your son with you?  
This is beginning to remind me of  
the Dutch horse breeders. They put  
all their yearlings, and 2 year olds in  
a barn, and they don't see any light  
till they are ready to be sold. We, on  
this side of the pond fondly liken  
that situation as being raised in a  
mushroom barn. Not a good  
situation. No light, no interaction  
with others. Please don't push my  
buttons. FYFU.

The Tenant stated that the Landlord, without basis, had an issue with her son, and as evidenced in the text message above. The Tenant stated that she was doing nothing wrong, yet the Landlord told her to "FYFU", which is slang for "fix your f\_ckup". The Tenant stated that the Landlord also threatened to call her employer to facilitate her pending site visit at the rental house. The Tenant stated that on October 9, 2019, the Landlord attended the house without notice, to winterize the taps and do a few other things. The Tenant stated that the Landlord again came into her yard on October 23, 2019 without notice. Starting in October, the Tenant asked the Landlord to put requests and Notices in writing, rather than send text messages. The Tenant provided a copy of a written notice to enter which the Landlord gave her for October 15, 2019. However, the Tenant pointed out that the Landlord still came and did work in and around her rental unit on at least a couple of other occasions, without any notice (October 9, 23, and again on October 28 to do front yard leaf cleanup).

The Tenant explained that as things started to degrade between her and the Landlord, she contacted the police. The Tenant explained that the police had a few conversations with both of them (starting at the end of September) in an attempt to encourage them each to have a third party present, or to use an agent, as to prevent further escalation. The Tenant stated that the Landlord would continue to do things to antagonize the situation, such as laying down on the Tenant's front lawn (photo provided) on October 28, 2019. The photo provided shows a rake, some leaves, and the Landlord laying down beside them on the lawn. The Tenant stated that eventually she filed a criminal harassment charge on November 19, 2019. The Tenant stated that she eventually moved out at the end of November because of all the stress and increasing hostility.

The Tenant further described part of a text message exchange whereby the Landlord demands to know the name of the company the Tenant is affiliated with, and stated she felt this was aggressive and threatening.

### Analysis

Based on all of the above, the *undisputed* evidence and testimony, and on a balance of probabilities, I find as follows:

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. The Tenant must also provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did everything possible to minimize the damage or losses that were incurred.

Section 28 of the *Act*, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*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.*

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*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;***
- *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*

*[my emphasis]*

*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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*

I note the Landlord and the Tenant were actively communicating by text message throughout the tenancy. This did not appear to become an issue until mid September 2019, when issues starting arising. The Tenant did not present any evidence or

testimony to explain whether or not she suffered a loss of quiet enjoyment from the time she moved in, until mid-September. It is unclear why she is seeking compensation for that period of time (from July until September). I do not find she has met the burden of proof to substantiate her claim for this period. As such, I will only consider her application for loss of quiet enjoyment for the period she spoke to, and highlighted (September till end of November 2019).

I note the following portion of the Act:

- 29** (1)A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
- (a)the tenant gives permission at the time of the entry or not more than 30 days before the entry;
  - (b)at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
    - (i)the purpose for entering, which must be reasonable;
    - (ii)the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

The Tenant is seeking \$150.00 per month in compensation for her loss of quiet enjoyment, which includes improper access to her suite and yard and the Landlord's aggressive behaviour.

It appears text message was an acceptable method of communication for the first part of the tenancy. However, I note the tone of the conversation changed markedly after the middle of September when things broke down because the Landlord borrowed the Tenant's ladder without permission. I note the Tenant asked the Landlord to give proper written notice that she would be coming to the rental unit at the end of September because of the degrading relationship.

After reviewing the text messages, I find some of the comments, tone and nature of the text messages from the Landlord to the Tenant were aggressive and contained unnecessary sarcasm and hostility, which merely exacerbated the issues they were already having. Although the relationship degraded fairly quickly, and the interactions were increasingly tense and personal, I find the Tenant has not sufficiently demonstrated that she suffered a "substantial interference" with the ordinary and lawful enjoyment of the premises. It appears the Landlord was largely attending the rental unit for reasonable matters (shutting taps off, inspecting plumbing, yard cleanup). Overall, I

find the Tenant is not entitled to compensation for loss of quiet enjoyment, pursuant to section 28 of the Act.

That being said, I find the Tenant has sufficiently demonstrated that the Landlord entered the area around her rental unit (for which she stated she has exclusive access to, since the Landlord had her own fenced area of the yard) on at least two occasions, after the Tenant made it clear she wanted to be given proper written Notice. Prior to the end of September, it appears the parties had a more informal and comfortable exchange, via text message. I note this changed and the Tenant made it clear that she wanted the Landlord to give her proper written notice when she needed access to the yard or house. However, it appears, based on the undisputed testimony, that the Landlord failed to do this more than once during October.

I note that an arbitrator may also award compensation in situations where establishing the value of the damage or loss is not as straightforward:

“Nominal damages” are a minimal award. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I find the Tenant is entitled to a nominal award for the Landlord’s breach of section 29 of the Act, most notably, after the Tenant had clearly expressed to the Landlord she wanted proper notice, rather than text message. I accept the Tenant’s undisputed testimony that proper written Notice was not given on more than one occasion in October. I award the Tenant a nominal amount of \$100.00 for this matter.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Tenant was partially successful in this hearing, I also order the Landlord to repay the \$100.00 fee the Tenant paid to make the application for dispute resolution.

In summary, I find the Tenant is entitled to a monetary order for \$200.00.

### Conclusion

The Tenant is granted a monetary order pursuant to Section 67 in the amount of **\$200.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenant may file the order in the Provincial Court (Small Claims) and be 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: December 11, 2019

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Residential Tenancy Branch