



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes FFT MNDCT OLC PSF RP RR

### Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and,
- authorization to recover their filing fee for this application pursuant to section 72.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The respondent acknowledged receipt of the applicant's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the parties were served in accordance with the Act.

Both parties testified that they have been involved in multiple Residential Tenancy Branch hearings and there is another hearing shortly regarding the tenants' application to cancel a notice to end tenancy. Related Residential Tenancy Branch hearing numbers are referenced on the first page of this decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67?

Are the tenants entitled to an order for the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62?

Are the tenants entitled to an order to the landlord to provide services or facilities required by law pursuant to section 62?

Are the tenants entitled to an order to the landlord to make repairs to the rental unit pursuant to sections 32 and 62?

Are the tenants entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65?

Are the tenants entitled to recover their filing fee for this application pursuant to section 72?

### Background and Evidence

The parties both testified that the landlord issued a notice to end tenancy on October 15, 2019 with a stated move out date of December 31, 2019. The tenants have filed an application to dispute the notice and a hearing on this application is upcoming.

The tenants testified that this tenancy started seven years ago and the current rent is \$1,165.00.

The tenant testified that the landlord lost four rent cheques so they had to incur cheque stop fees of \$52.00 to place stop payments on the lost cheques. The tenants provided copies of the bank charges. The landlord denied this allegation.

The tenants testified that the landlord frequently harassed them and interfered with their quiet enjoyment of the rental unit. Specifically, the tenants testified that the landlord played loud music to disturb the tenants repeatedly in April 2019. The tenants provided text messages sent between the parties regarding this issue.

On April 2, 2019, the tenant asked the landlord to turn down the music. The landlord replied stating, "I respectfully decline." On April 3, 2019, the tenants again requested the music be turned down and the landlord replied stating:

We are a working warehouse and like our music loud...but aren't you supposed to be gone?  
March 31 was move out day for you.

The tenant complained again about the noise on April 4, 2019 and the landlord responded: "MOVE OUT problem solved, simple" The tenant complained about the noise again on April 18 and the landlord responded again by stating that this is a warehouse complex and he suggested the tenant can move out.

The tenant advised the landlord that they made a police complaint on April 19, 2019 and the landlord responded by stating:

As per my discussion w them... there is no bylaw nor criminal code violation with regard to noise in an industrial warehouse complex, and are unsympathetic to your whining ... you sir, are wasting their time which can be addressed criminally.

The tenants claim that the landlord has improperly removed their access to parking. The tenants testified that they had access to a parking space throughout the tenancy but the landlord unilaterally terminated their parking access on April 22, 2019. The tenants testify that they are now forced to use street parking

approximately 20 feet away. The landlord testified that the business had the right to reserve parking for their customers and the tenants only need to walk about ten feet to street parking.

The tenants claim that the landlord has improperly removed their access to trash removal. The tenants testified that they agreed to the termination of trash services five years and the recently requested the trash services again but the landlord denied this request. The landlord testified that there was never trash service included in the tenancy.

The tenant also requested repairs to the door bell, smoke detector and rear addition. The landlord testified that the doorbell never worked and the tenants removed the smoke detector. The landlord argued that there was no evidence that there was any deficiency in the rear addition.

The tenant also complained about the landlord interfering with the mail service. This claim was not included in the tenant's application for an order. The landlord testified that the tenant's mailbox was removed by Canada Post in his presence because mailbox was full.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the landlord to prove entitlement to a claim for a monetary award. 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.

I find that the tenants have provided sufficient evidence to establish that they sustained a loss of \$52.00 as a result of having to place stop payments on rent cheques. Although the landlord provided conflicting testimony, based on the corroboration of the banking records, I find the tenants evidence is more likely than not to be true. I grant the tenants an award of \$52.00 for the bank fees.

I find that the tenants have provided sufficient evidence to establish that the landlord interfered with their quiet enjoyment in April 2019 by making loud noise. Although the landlord provided conflicting testimony, I find that the tenants' testimony is corroborated by the landlord's own text messages. However, I find that the tenants have not provided sufficient evidence to establish a claim for loss of quiet enjoyment after April 2019.

The tenants claim compensation in the amount of one-half of the monthly rent. In light of repeated and harassing nature of the landlord's noise disturbances, I find that compensation in the amount of one-half the monthly rent is appropriate. Accordingly, I grant the tenants a monetary award in the amount of \$582.50 for loss of quiet enjoyment, being one-half of the rent of \$1,165.00 in April 2019.

I find that the tenant has provided sufficient evidence to establish that parking was an included service in the tenancy agreement which the landlord has withdrawn. Section 27 states that a tenant is entitled to a reduction of rent following a termination of services. I find that the reasonable value of the parking spot is nominal since both parties agreed that street parking is available nearby. Accordingly, I grant the tenants a reduction of rent in the amount of \$25.00 per month for the loss of parking services. The tenants are granted an award of \$225.00 to compensate them for the loss of parking (nine months from April 2019 to December 2019 at \$25.00 per month). In addition, commencing with January 1, 2019, the tenants may deduct the sum of \$25.00 from each monthly rent payment until parking services are restored.

I find that the tenants have not provided sufficient evidence to establish that garbage services were terminated by the landlord. Based on the tenants' testimony, I find that the tenants voluntarily cancelled their garbage service five years ago. Accordingly, the claim is denied.

Section 32 of the *Act* states that the landlord must keep the rental unit in a condition that "...complies with the health, safety and housing standards required by law." I find that the tenant has not provided sufficient evidence to establish that the repair of the doorbell meets this standard. Accordingly, the tenants' request for repair of the doorbell is denied.

I find that the smoke detectors are required for "health, safety and housing standards" of rental units. Accordingly, I grant the tenants' request for the repair of the smoke detector.

I find that the tenants have failed to provide sufficient evidence to establish that the rear addition poses violation of a "health, safety and housing standards." Accordingly, this claim for repair is denied.

The tenants provided testimony regarding a loss of access to the mail services even though this claim was not stated in the tenant's application. Residential Tenancy Branch *Rules of Procedure* No. 2.2 states that an applicant's claims are limited to what is stated in the application. Since the tenant's application did not state a claim for compensation for loss of access to mail services, this claim is dismissed pursuant to *Rules of Procedure* No. 2.2.

Since the tenants have partially prevailed in this matter, I grant the tenants recovery of one-half of the filing fee, being \$50.00, pursuant to section 72 of the *Act*.

Accordingly, I grant the tenants a monetary order in the amount of **\$909.50**, as calculated below. If this tenancy continues, this award may be satisfied by deducting the sum of \$909.50 from ONE future rent payment.

<u>Item</u>	<u>Amount</u>
Compensation for bank fees	\$52.00
Compensation for loss of quiet enjoyment	\$582.50
Compensation for loss of parking	\$225.00

Partial reimbursement of filing fee	\$50.00
Total	<b>\$909.50</b>

Conclusion

I grant the tenant a monetary order in the amount of **\$909.50**. If this tenancy continues, this award may be satisfied by deducting the sum of \$909.50 from ONE future rent payment. If this amount is not deducted from a future rent payment and the landlord fails to comply with this order, the tenants may file the order in the Provincial Court to be enforced as an order of that Court.

Commencing with January 1, 2019, the tenants may deduct the sum of \$25.00 from each monthly rent payment until parking services are restored.

The landlord is ordered to repair the smoke detectors in the rental unit.

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 15, 2019

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Residential Tenancy Branch