



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, PSF, RR, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary claim of \$14,514.10 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for an order to provide services or facilities required by the tenancy agreement or law, for a rent reduction, and to recover the cost of her Application filing fee. The hearing had to be reconvened, because the Parties had not finished giving evidence on these matters.

The Tenant, Counsel for the Tenant, L.M.-B. ("Counsel"), the Landlords and an agent for the Landlord ("Agent") appeared at the teleconference hearing and gave affirmed testimony. All but Counsel attended the reconvened hearing and gave affirmed testimony.

I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing. During the hearing, the Tenant, the Agent, and the Landlords were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed

their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

### Issue(s) to be Decided

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- Should for an Order be made for the Landlord to provide services or facilities required by the tenancy agreement or law?
- Should an Order be made to reduce the rent for repairs, services or facilities agreed upon but not provided?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on July 1, 2017, with a monthly rent of \$800.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$450.00, and a pet damage deposit of \$450.00.

The Parties gave extensive testimony about incidents involving multiple dogs on the residential property. To summarize, the Parties agreed that there were two primary incidents involving the Tenant's dog, Diesel, being attacked, and ultimately killed by other dogs on the property. The Tenant seeks compensation for feeling unsafe in the common area of the residential property, because of the behaviour of another tenant's dogs, Cobalt and Caesar, the dogs who the Parties agree attacked and killed Diesel, respectively.

The Tenant said in the hearing that she has applied for compensation for her inability to use the common area, given the number and behaviour of dogs who roam free in the area. The Tenant seeks compensation for her veterinarian bills arising from the attacks on her dog, and for the Landlord to comply with the terms of the tenancy agreement. The Tenant said that having seen the Landlord's evidence, she was surprised that Diesel's character was being maligned. She said: "A significant portion of Landlord's evidence puts a dead dog's character into evidence. Diesel was attacked and killed." She said she could not have anticipated that her dog would be blamed for the attacks and his character put into question in this way.

The Tenant submitted the following monetary order worksheet setting out her monetary claims:

	<b>Receipt/Estimate From</b>	<b>For</b>	<b>Amount</b>
1	Vet invoice (Feb 7, 2018)	Injuries to Diesel	\$2,908.91
2	Vet invoice (Feb 20, 2018)	Injuries to Diesel	\$107.71
3	Vet invoice (Feb 16, 2018)	Injuries to Diesel	\$86.62
4	Vet invoice (Feb 13, 2018)	Injuries to Diesel	\$44.45
5	Vet invoice (April 8, 2018)	Injuries to Diesel	\$1,381.53
6	Employee Monthly Time Sheet	3 days off work	\$524.16
7	Estimate p. 61 affidavit	Loss of enjoyment	\$7,963.12
8	Estimate p. 61 affidavit	Time attempting to com...	\$1,497.60
		<b>Total monetary order claim</b>	<b>\$14,514.10</b>

The relevant evidence before me includes:

The Parties agree that the Tenant's dog was a Chihuahua named Diesel. The Parties agree that on February 5, 2018, that Cobalt attacked Diesel, leading to injuries set out in the Tenant's photographs of the dog and the veterinarian bills. The Parties agreed that Cobalt is a German Shepherd mix owned by another tenant, A.T., but that he was under the control of a third tenant, A.M. at the time. The Parties agreed that on May 5, 2018, the Tenant's dog was attacked and killed by Caesar, a Pitbull of approximately 120 pounds. Caesar belongs to A.M. The Tenant said she was also injured from these attacks on her dog.

The Tenant says she was traumatized by the incidents, that she lost three days of work in February 2018, due to the first attack. She says the Landlords did nothing to enforce the tenancy agreements, and did nothing to deal with the nuisance, assaults or breach of quiet enjoyment she said she endured.

The Tenant said that after the first attack, she and the tenants, A.M. and A.T., worked together to develop a plan with which Diesel could be out twice a day, and the other dogs would be kept inside or on leashes.

The Tenant said that a significant factor in the behaviour of the dogs on the residential

property happened in January 2018, when a tenant, R.R., allowed C.B. and her four, non-spayed female dogs to move in with him. The Tenant said that she, A.M., and A.T. noticed that their dogs started to show signs of responding to the new female dogs on the residential property, which C.B. allowed to run free. The Tenant said: "Before those dogs arrived on scene, the situation was good for everybody. We were all happy. When those female dogs came on to the property, though, things changed."

The Agent said:

I became aware of these dogs in mid-January. I told [C.B.] that she had to leave with her dogs. I also wrote a caution letter to R.R., since he's the tenant, that these dogs have to be removed as soon as possible, or by February 15 at the latest, or I will issue a notice to end tenancy. That is the extent of what I can do. I physically can't remove the dogs. The SPCA won't remove dogs that are simply not wanted. They must get a court order to do so for being abused or malnourished.

Yes, it is true that before [the Tenant] arrived, dogs were allowed to roam free with no incidents, everyone was happy. Why change if everyone is happy? That had to change after [the Tenant] moved in, because [A.M.] and [A.T.] thought that Diesel was going to cause problems.

The Agent submitted a written statement dated November 1, 2019, by A.M. who described the introduction of Diesel to the residential property. A.M. said that she has lived at the residential property for nine years, and she made the following statements regarding interactions she has had with the Tenant and her dogs. A.M. said:

[The Tenant] moved into [the residential property address] during the summer of 2017 with an unfixed male chihuahua she said she rescued from a breeding farm. Right from the beginning her dog showed aggressive behaviour toward all humans, [the Tenant] included, and all dogs. He would bare his teeth, growl, nip, snarl, and lunge forwards, while nipping. He nipped and snarled at me and one day actually bit my boot. I never saw [the Tenant] try to restrain or restrict this aggression in her dog. Her attitude was that since he was small, that he could not possibly be dangerous. There are no different set of laws for small dogs, and all dog owners have the same responsibilities and must follow the same laws.

...

This dog was dominating and vicious towards my roommate's dog, Cobalt (a blue heeler/hanging tree dog male) to the point that he would follow him around

growling and barking until Cobalt was pressed up against the door to our apartment with his hackles up whining to go in. One time when this happened [the Tenant] said, 'oh, don't worry, he's backing off.' Speaking of Cobalt like I was worried about Cobalt biting Diesel when I was actually worried for Cobalt. I don't believe in allowing that kind of behaviour towards any dog.

Diesel was allowed to continue with aggressive behaviour up to and including peeing on both my front door and my back door on multiple occasions, and to a dog that is the ultimate insult. It is like saying everything that dog owns, now belongs to the challenging urinator. These dominance challenges were never restricted by Diesel's owner.

Sometime in October 2017, my roommate and I realized that this dog was always going to be aggressive, so we agreed, we being my roommate and I, that the dogs would remain separated. Every time we went out for a walk in the bush (the only time the dogs were ever allowed off-leash) I posted a dry erase sign that told when I had left and when I was expected to return (+ half an hour) just in case I forgot to pull the sign. This sign was posted whether [the Tenant] was home or not. Any place and time of risk of contact was double covered, just in case.

[The Tenant] asked for certain times of the day to let her dog out and we agreed. She asked for fifteen minutes before she went to work and fifteen after she got home. We gave her an hour each time instead, just to be sure. For a time, we all worked together to good effect [the "Plan"].

The Agent said that he has not received any other complaints about Cobalt or Caesar. Further, he said that after they met Diesel, the Landlords stopped bringing their dogs to the residential property when they visited.

A.M. went on to describe that in January 2018, C.B. moved in with R.R. and with her unfixed, female dog and her three puppies. She said:

She had finished nursing a while ago, but still had not been fixed. These dogs' owner did not respect [the Tenant's] times, or my desire to keep her unfixed dogs away from mine. This dog owner's unwillingness to work with anyone else, and the fact that she lied about her being spayed, forced [the Agent] to take action and have her removed from the premises.

A.M. described the first attack, as follows:

In early February, before the four unfixed dogs left, I was out with my dogs in the back yard and heard Diesel's growling barks. Before I could bring my dogs in, Diesel, an aggressive dog off leash, charged around the corner and attacked Cobalt. Cobalt bit back, once. [The Tenant] hurled herself bodily over Diesel and all of the big dogs backed off. Diesel bit her in the face.

I put the dogs inside and at [the Tenant's] request called the emergency vet line. We bundled up a snapping, biting Diesel into his crate and since [the Tenant] was too distraught, I drove him to [a local] Veterinary Clinic. Once Diesel was removed from the crate, he tried repetitively to bite both me and the vet's assistant. The assistant was forced to put a towel over his head in order to examine him. When the vet arrived, she asked me if Cobalt had ever been aggressive to other dogs before and I said no. No more was said about the bigger dog. When [the Tenant] arrived in her own car, the vet told/suggested getting him fixed and offered to make an appointment right then.

Diesel had punctures on his back and belly, and they believed that his organs had been nicked. It was not a small vet bill.

Because I was the one who was looking after Cobalt when this happened, I felt responsible, so I emptied my savings account and gave her everything I had. It was \$600. When I looked up my responsibilities on line, I saw that dog owners will be held responsible for any property damages to injuries their dogs cause, but if the dog was provoked, the owner may not be held liable for any injuries caused. I actually did not have to pay anything. I did it because I felt bad for her and wanted to stay in good relations with my neighbour.

From then on, all dogs were on ropes while on the property and supervised. They were never allowed out during [the Tenant's] agreed times.

Diesel healed up and continued with his aggressive, unchecked behaviour.

A.M. went on to describe an evening in which she and her guests wanted to take their dogs into the mountains to play. She said she knocked on the Tenant's door and told her of their plans, asking if she wanted to let Diesel out first, which the Tenant declined. A.M. said she told the Tenant that they would be gone for no more than an hour and that she would let the Tenant know when they were back. She said the Tenant agreed to keep Diesel inside until the other dogs returned.

A.M. explained that because the snow made walking difficult, they turned back less than half way through the walk. She said:

As soon as we neared the back yard, we could hear Diesel's growl-bark challenge and before we could scramble for the leashes, which were always with us, Caesar ran on ahead and bit Diesel.

If [the Tenant] had said no to us walking the dogs in the bush off leash, they would have been leashed. If she wanted to let Diesel out first, we would have waited. If she had waited until we got back, she could have had the whole yard to herself for the rest of the evening.

Caesar had never shown aggression to other dogs before, but my dogs had never been subjected to this kind of unchecked breeder dominance before [the Tenant] came.

. . .

There were no accusations and no words of compensation, I think because [the Tenant] knew she had already cleaned me out and that this was entirely her fault. In fact, she had said to me, 'you must think I am a horrible dog owner.' It would have been compassionless and cruel for me to agree with her verbally at the time, so I did not.

The Tenant's version of events on this day are as follows:

[A.M.] was going to take all the dogs off the property. Even Luke would be gone. This was a safe time. My recollection is different from [A.M.'s] . . .there was not supposed to be any dogs on the property, so there was an opportunity to go for a pee.... Andrea said she'd be gone for an hour. I waited 15 minutes, so that the dogs would be far, far away. However, it didn't last an hour.

In the reconvened hearing, the Tenant continued with her description of the day of the second attack:

I thought all dogs had been removed from the property. I took Diesel downstairs, he couldn't do stairs on his own yet. I was standing off of the deck, I looked up and saw what amounted to a pack of dogs: Caesar, Lola, Luke, and Cobalt, and possibly other dogs. They came running around the building and Caesar separated from the pack. He charged me and Diesel. Diesel was still peeing. I only had a few seconds, if I picked up Diesel, his stitches might rip. Caesar was on a charge and not acknowledging my presence, whether I was trying to protect

my dog or not. I wasn't prepared. . . it was very scary he looked very threatening. He had a mission - he was out to harm my dog. Caesar grabbed Diesel and punctured his stomach again, let go and grabbed on again, going for another bite. I reached down to try to stop him, but he bit my finger, ripped it open. He bit Diesel's head. By the time we were at the vet, Diesel's lung had collapsed. It was a severe attack with the intent to kill.

The Tenant said that the Plan worked well until [C.B.] arrived with her dogs. "She was not complying with the Plan, so when I took my dog out for my time, her dogs – four dogs and Luke, were running around; the Plan that [A.M.] and I had was no longer effective. What did [the Agent] do to ensure that they would abide by the Plan?"

In the hearing, the Agent said:

I became aware of [the Plan] after the first dog attack. [A.M.] told me about the Plan. Keeping the dogs separate seemed like a good plan. I said to let me know if the Plan isn't working and I will do what I can to help. Regarding [C.B.'s] dogs, they were not supposed to be there in the first place. I told her to take the dogs, I threatened [R.R.] with eviction.

[B.M.], the owner of Luke was a difficult tenant and I had to evict him shortly after this all went down. I think the relevant point is what we could have done differently with the available information we had open to us at the time. We were never told there was an ongoing problem. On the day of the first attack, [the Tenant] referred to the Plan. [A.M., A.T.], and I have worked hard . . . I did everything I could. On February 18 – almost two weeks after the first attack in a text message it says, 'I asked [B.M.] if we could figure out a system. Perhaps similar to how [A.M.] and I have worked things out.' So up until I heard of the second attack, I was not aware that anything needed attention or help.

I didn't make this Plan, the Plan was enacted by [A.M., A.T., and the Tenant] together. After the first attack, I was informed of this Plan and thought it was a good Plan.

It seems to me that going from [the Tenant's] evidence and [A.M.'s] letter, [A.M.] was under the impression that Diesel would be kept inside until they returned. They were not in a vehicle, they just started walking. [The Tenant] had a different impression, and it seemed like a tragic case of miscommunication. I couldn't have done anything to change that, unfortunately.



In the hearing, the Agent said that B.M. has been evicted, therefore, his dog, Luke, has also left the property.

The Agent submitted a copy of a letter dated January 24, 2018, to the tenant, R.R., about the presence of C.B. and her dogs in R.R.'s apartment. The Agent notes in this letter that R.R. is contravening the tenancy agreement, and the *Residential Tenancy Act* by allowing the [C.B.] and the additional dogs to stay without the Landlord's permission. He concluded the letter by saying:

I am hereby giving you official notice that the unauthorized occupant must move out of the building as soon as possible, but in any circumstances, no later than February 15<sup>th</sup>, 2018. If the unauthorized occupant and her dogs have not vacated your suite by that time, I will have to issue you a Notice to End Tenancy under section 47 of the Act.

Evidence in text messages submitted by the Parties indicates that C.B. and her dogs were gone by February 18, 2018.

The Landlord submitted a copy of the "Addendum for a Pet" that is part of the Tenant's tenancy agreement. The terms include the following:

3. While on the residential property, the pet shall not be permitted upon or near any shrubbery, flowers or trees and will be kept on a leash or similar control....

6. If the pet becomes a nuisance or annoyance in any manner including behaviour, noise, smell or cleanliness, or interferes with the rights or quiet enjoyment of other tenants or neighbours, the landlord may require the pet to be removed.

[emphasis added]

The Tenant submitted a copy of her tenancy agreement, and she pointed to paragraphs 17 and 18, as being relevant to her claim. Paragraph 17 is entitled "CONDUCT" and addresses tenants' responsibility to avoid behaviour that could "disturb, harass, or annoy another occupant of the residential property, the landlord, or a neighbour." The tenants are discouraged from disturbing the quiet enjoyment of another occupant of the residential property.

Paragraph 18 is entitled, "PETS", and states that tenants may only have pets in the rental units if specifically permitted in writing in advance by the Landlord. The paragraph

also states: “. . . the tenant must ensure that the pet does not disturb any person in the residential property or neighbouring property, and further the tenant must ensure that no damage occurs to the rental unit or residential property as a result of having or keeping the pet. This is a material term of this Agreement.”

The Tenant said that the Landlord failed to use tools such as these clauses in the tenancy agreements, as well as section 47(1)(d)(i) of the Act, which allows a Landlord to evict a tenant who has or whose guest has “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.”

The Tenant seeks to have the Landlord remove Caesar from the property, and compensation for damages that she has incurred, because of the Landlords’ failure to enforce tenants’ safety obligations.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 67 of the Act provides that where an arbitrator finds that damages or loss results from a party not complying with the Act, regulation, or tenancy agreement, the arbitrator may determine the amount of that or the loss, and order compensation to the applicant.

As set out in Policy Guideline #16 (“PG #16”), “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 claiming compensation to provide evidence to establish that compensation is due.” The applicant bears the burden of proof on a balance of probabilities to provide sufficient evidence to establish all of the following four points:

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

(“Test”)

Where the applicant has not met each step of the Test, the burden of proof has not

been met and the claim fails.

Essentially, the Tenant claims that the Landlord is responsible for Diesel's death, because he did not enforce clauses in the tenancy agreements of tenants living at the residential property. The Tenant indicated that the presence of C.B.'s dogs was a significant factor in the male dogs' behaviour on the property.

However, I find from the evidence before me that the Agent did what he legally could have done in the circumstances to remove C.B.'s non-spayed, female dogs from the premises. In fact, the evidence indicates that these dogs had left the property two and a half months prior to the second attack.

The Tenant referred to the dog, Luke, as being allowed to run free whenever his owner, B.M. wanted. While Luke and B.M. may have been a nuisance at times, it is not clear how Luke was involved in Diesel's death. Further, B.M. has since been evicted from the residential property.

I find that the reasonable dog owners on the property had worked together to develop the Plan, which allowed the Tenant to have protected time during which Diesel could be allowed out twice a day. However, on May 5, 2018, an interim plan was in place which saw a number of dogs go for a walk with A.M. and her friend. Prior to the walk, A.M. checked with the Tenant to offer her an opportunity to let Diesel out before the other dogs were outside off leash; however, the Tenant declined this proposal. Rather, she agreed to keep Diesel inside until she was advised that the other dogs were back inside after their walk.

Unfortunately, due to miscommunication and/or misunderstanding, the Tenant did not comply with this agreement, and she let Diesel out prior to being notified that the dogs were back inside; unfortunately, the second attack occurred.

During the hearing, the Tenant said she did not expect that Diesel's character would be put into question; however, I find that there is evidence before me that, though small, Diesel was an aggressive dog that sometimes cornered bigger dogs like Cobalt. The evidence before me is that the Tenant did not attempt to restrain this behaviour in her dog. I find on a balance of probabilities that Diesel's behaviour contributed to other dogs' irritation with him. This does not excuse what happened, but it helps explain how this situation got off course and ended with such an unfortunate result.

I find that this is a complicated situation with multiple factors contributing to the terrible

outcome. I find that the Tenant did not prove on a balance of probabilities that the Agent or Landlords could have done anything to prevent Diesel's death in this situation. As a result, I find that the Tenant has not established the first step of the Test that the Landlords or Agent violated the Act, regulation or tenancy agreement in this set of circumstances. Further, I find that the Tenant provided insufficient evidence that her quiet enjoyment of the premises was infringed, and that the Agent and the Landlords are responsible. C.B. and her dogs were removed, B.M. and Luke were evicted. I find that the Agent did what was appropriate in the circumstances and did not, therefore, breach the Act, regulation or tenancy agreement.

As a result, I find that the Tenant has not met her burden of proof in this matter, and I dismiss her Application wholly without leave to reapply.

### Conclusion

The Tenant is unsuccessful in her Application. She did not prove on a balance of probabilities that the Landlords or Agent were responsible for the unfortunate death of her dog, Diesel, nor of her loss of quiet enjoyment. The Tenant did not prove that the Agent or Landlords violated the Act, regulation or tenancy agreement in a manner that resulted in the costs she claims to have suffered, as a result of their conduct. The Tenant's Application is dismissed wholly without leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 21, 2020

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Residential Tenancy Branch