



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **FFT, MNDCT**

### Introduction

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

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for compensation for monetary loss or other money owed pursuant to section 67.

The tenant attended the hearing and the landlord attended the hearing with his counsel, MS. As both parties were present, exchange of documents was examined. The landlord acknowledges receipt of the tenant's Application for Dispute Resolution although he received it late due to the tenant sending it to the wrong address. Despite this, the landlord was prepared to proceed to having the merits of the tenant's claim heard. The tenant did not acknowledge receipt of the landlord's evidence. The landlord submits that a process server personally served the landlord's evidence however the landlord was unable to provide any proof of service documents. The landlord was content that his evidence would be limited to oral testimony as he was unable to satisfy me the evidentiary documents were exchanged with the tenant.

### Issue(s) to be Decided

Is the tenant entitled to:

- Authorization to recover the filing fees from the landlord pursuant to section 72; and
- An order for compensation for monetary loss or other money owed pursuant to section 67?

### Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during

testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant provided the following testimony. The rental unit is a laneway house, and the landlord and his family live in the main house on the property. There was no tenancy agreement signed by the parties when the tenant moved into the laneway house on December 15, 2015. Rent was set at \$1,350.00 per month however the tenant paid the landlord \$5,400.00 when he moved in, comprising of rent from December 15<sup>th</sup> to March 31<sup>st</sup> and the security deposit of \$675.00. The tenant testified the security deposit was not returned to him as it was applied to his last month's rent.

The tenant testified that when he moved in, there was a tall fence between the main house and the carriage house that he rented. At the time, the landlord had a well-behaved dog. When the dog died, the landlord tore down the fence separating the 2 houses and the landlord proceeded to pave the back yard. No dates were provided.

Some time later, the landlord then got a pit bull puppy. This puppy was not well behaved, and the dog barked, screamed and cried constantly. The tenant complained to the landlord numerous times and advised the city bylaw officials that the landlord's dog was disturbing the peace of the neighbourhood. The tenant read a letter dated September 6, 2017 whereby he states the torn down fence eroded his privacy, the new dog defecates close to his residence and disturbs his quiet enjoyment. The tenant testified he gave the landlord until September 13<sup>th</sup> to remedy the situation by reinstalling the solid fence and removing the disturbing dog. The tenant did not provide a copy of the letter into evidence and the landlord denies the letter was ever served upon him.

In evidence, the tenant provided multiple recordings of the dog barking. I note that none of the digital recordings files are named with date or time stamps. Also, the tenant provided photos of the patio area of the shared home that depict a caged in area for a dog. The tenant did not draw my attention to these photos to describe which area was his and which belonged to the landlord. Likewise, photos of dog feces were not specifically mentioned during the tenant's testimony although many were provided as evidence.

The tenant states the landlord's refusal to rectify the situation led him to give the landlord a one month notice to end the tenancy in mid-September 2017, with an

effective date of October 15, 2017. The tenant seeks recovery of moving expenses, costs to clean the rental unit, costs to shampoo the carpets and paint from the landlord as a result of ending the tenancy.

In the city where the rental unit is located, allowing the sound of a barking or howling dog that a person not on the same premises can easily hear and that disturbs the quiet, peace, rest, enjoyment, comfort or convenience of such person is a bylaw offence. The tenant testified that the landlord plead guilty to this offence and was fined \$500.00. The tenant obtained a transcript of the hearing and provided it in his evidence package. The tenant seeks to recover the cost of the transcript from the landlord.

The tenant seeks 10 months at \$500.00 per month for a loss of privacy when the fence was removed. Likewise, the tenant seeks to recover full rent for September and the half month of October. The tenant could not testify as to how he quantified this claim. Lastly, the tenant says he is entitled to \$10,000.00 as mental, emotional stress and suffering due to a loss of sleep from the socially untrained dog's barking and feces left everywhere. The tenant acknowledges this amount was arbitrary and the tenant did not provide any documents to quantify how he arrived at this amount either.

The landlord's counsel points out the tenancy ended on October 15, 2017 but the tenant did not file his Application for Dispute Resolution Proceedings until October 18, 2019. At this point, I advised landlord's counsel that the tenant filed for dispute resolution on October 14, 2019, one day before the two year limitation on filing for dispute had passed.

The landlord submits that he received the tenant's notice only 2 weeks before the tenant wanted to end the tenancy. The landlord also points out the tenant's notice to end tenancy is not dated. He never got the keys back and only found out the rental unit was empty 4 or 5 days after the 15<sup>th</sup> of October, 2017. The tenant never paid rent for the period from September 15, 2017 to October 15, 2017 so the tenant's claim for the 2 month period is baseless.

The tenant's claim for \$5000.00 compensation for loss of privacy when the fence was removed does not meet the requirement to verify how he established this amount. Nor does the tenant's \$10,000.00 claim for mental, emotional stress and suffering. No doctor's letters or medical reports were submitted to corroborate the tenant's claim.

Regarding the tenant's claim for moving, cleaning, painting and carpet cleaning: the tenancy was ended by the tenant so the tenant is responsible for his own costs associated with moving out.

The reason the landlord plead guilty to the bylaw offence was to expedite the court proceedings and not waste court time. The landlord should not be responsible for paying the fees to transcribe the hearing proceedings.

### Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Under section 28 of the Residential Tenancy *Act*, a tenant is entitled to quiet enjoyment, including, but not limited to the rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession, subject to the landlord's right of entry under the Legislation; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline PG-6 sets out the basis for finding a breach of quiet enjoyment.

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.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants **if it can be established that the landlord was aware of a problem** and failed to take reasonable steps to correct it.

Based on the evidence, I find that sometime during the tenancy, the landlord became the owner of a dog that caused the tenant to suffer from a loss of sleep and quiet enjoyment of the rental unit. Although I make this finding, the tenant has not provided sufficient evidence to establish that the tenant informed the landlord that the dog disturbed him.

In order to be entitled to compensation for the landlord's violation of the *Act*, regulations or tenancy agreement, the tenant must be able to show he made the landlord aware of the term of tenancy being violated and that the landlord failed to take the steps to remedy the violation. In evidence, the tenant did not provide a copy of the letter he states was served upon the landlord on September 6, 2017. This is the same letter the landlord denies ever receiving. Although the tenant testified that he complained numerous times and sent text messages, I was not directed to any text messages, or emails to corroborate this testimony during the hearing. As the onus is on the person making the claim to prove the facts occurred as claimed; in the absence of sufficient corroborating evidence, I find the letter was not served and the tenant has not provided sufficient evidence to show he notified the landlord that his quiet enjoyment was being disturbed.

Second, the tenant has not provided any basis upon which he could establish his claim for his loss of privacy of \$5,000.00 or mental, emotional stress and suffering for \$10,000.00, or why he should have the entire rent for the months of September and half

of October returned to him. No case law was presented where awards were made in similar situations and no independent medical opinions were submitted to corroborate the tenants' claims. Turning to the 4 point test, the tenant has failed to establish the value of the damage or loss he claims he sustained (point 3). As the tenant has not been able to establish that he made the landlord aware of any breach of the *Act*, regulations or tenancy agreement, and because the tenant has failed to establish the value of the damage or loss claimed, the tenant's application to be compensated for above mentioned items (#1, #2 and #7 on the tenant's monetary order worksheet) are dismissed.

The tenant testified the tenancy agreement was month to month. While I am sympathetic to the loss of sleep and other aggravations brought on by the landlord's adoption of a dog, the tenant could have exercised his right to end the tenancy on one month's notice to the landlord. While neither the tenant or the landlord testified as the duration that the tenant remained living in the rental unit after the landlord adopted the new dog; in a month to month tenancy, the tenant has the right to end the tenancy upon one month's notice to the landlord. Choosing to remain living in the rental unit and seeking compensation from the landlord afterwards does not exemplify the tenant mitigating his claim.

Section 37(2) of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear. The landlord can only be held responsible for paying compensation to a tenant when the landlord has breached or violated the *Act*, regulations or tenancy agreement. The tenancy was ended by the tenant according to his right to do so under section 45 of the *Act*. As a tenant is responsible for cleaning, carpet cleaning and painting the rental unit at the end of a tenancy, I find the costs associated with doing so should be borne by the tenant. This also applies to the tenant's claim for hiring movers. The tenant ended the tenancy in accordance with section 45 and he is therefore not entitled to the costs associated with moving out.

Lastly, it was the tenant's decision to purchase the transcript of the proceedings whereby the landlord plead guilty to the bylaw offence. Section 72(1) of the *Act* provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the *Act* does not provide for recovery of other costs associated with making an Application for Dispute Resolution, gathering evidence, or serving hearing documents. The application to recover the costs of the transcripts is dismissed.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

The claim is dismissed 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: February 27, 2020

---

Residential Tenancy Branch