



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on November 13, 2019 (the “Application”). The Tenant applied for compensation for monetary loss or other money owed and reimbursement for the filing fee.

The Tenant and Landlords appeared at the hearing. I explained the hearing process to the parties. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlords confirmed receipt of the hearing package and Tenant’s evidence. The Landlords testified that they did not serve their evidence on the Tenant because her address for service on the Notice of Dispute Resolution Proceeding was crossed out. The Landlords submitted evidence of this. The Tenant agreed she crossed out her address for service and pointed out that she left her email.

The Application was filed November 13, 2019. At that time, email was not a form of service permitted by the *Residential Tenancy Act* (the “Act”). Given this, I found the Landlords had no obligation to attempt to email their evidence to the Tenant. If the Tenant wanted to receive the Landlords’ evidence, the Tenant should have provided an address for service. The address for service did not need to be the Tenant’s residence, but it did need to be a mailing address not an email address. I found that the Tenant did not receive the Landlords’ evidence due to her own actions in crossing out her address for service. In these circumstances, pursuant to rule 3.17 of the Rules of Procedure (the “Rules”), I found the Landlords’ evidence admissible despite it not being served on the Tenant.

The parties were given an opportunity to present relevant evidence and make relevant submissions. The parties were told to point to the evidence they were relying on. I have considered all oral testimony of the parties and the documentary evidence pointed to during the hearing. I have only referred to the evidence I find relevant in this decision.

I note that one of the Landlords exited the conference call for a brief period during the hearing. I continued in their absence. This hearing proceeded past the one hour set. Around 2:35 p.m., the Tenant exited the conference call without warning or explanation. The Tenant never called back into the conference call. I continued in the absence of the Tenant as I had heard the Tenant's position and was hearing from the Landlords. I have decided this matter because I heard both parties on the issues before me. Further, parties are expected to remain on the line throughout the conference call and the Tenant was expected to remain on the line or call back into the conference if there was a technical issue.

#### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

#### Background and Evidence

Part of a written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started May 01, 2019. The parties agreed rent was \$2,350.00 per month.

The parties agreed the tenancy ended October 13, 2019.

The Tenant sought the following compensation:

Item	Description	Amount
1	Letter to MCFD contract cancellation	\$13,500.00
2	Noise reduction rug	\$365.67
3	Noise reduction rug	\$317.91
4	Noise reduction rug	\$186.18
5	Noise reduction rug	\$195.49
6	Security cameras	\$156.39

7	Security cameras	\$156.39
8	Privacy drapes	\$94.04
9	Privacy tent	\$156.79
10	Privacy tent	\$176.94
11	Security camera recording device	\$139.99
12	Cancelled airline to China due to safety concerns at home	\$1,255.46
13	Emergency accommodation September 18 – September 30	\$2,884.90
14	Emergency accommodation September 30 – December 18	\$11,991.33
	<b>TOTAL</b>	<b>\$31,577.48</b>

The parties provided the following testimony and submissions in relation to the compensation sought.

#### ***#1 Letter to MCFD contract cancellation***

The Tenant testified as follows. The tenants had arranged to be foster parents. The Ministry had to approve their residence as safe for children. People from the Ministry attended the rental unit half a dozen times and said the residence was not safe because of the noise from the upstairs tenant and construction going on. The tenants cancelled their contract to be foster parents because of this.

The Tenant could not point to evidence submitted from the Ministry confirming they attended the rental unit or deemed it unsafe. The Tenant had submitted a letter from her to the Ministry.

#### ***#2 - #5 Noise reduction rugs***

Throughout the Tenant's evidence and during the hearing the Tenant raised issues about the upstairs tenant being excessively loud or noisy. The Tenant testified that the floors in the rental unit were hardwood and so the tenants thought they could reduce the noise in the rental unit, caused by the upstairs tenant, by putting rugs on the floor.

The Tenant testified that she told the Landlords about the noise from the upstairs tenant, that they acknowledged it was ridiculous and said they would evict the upstairs tenant. However, the Landlords did not evict the upstairs tenant. The Tenant submitted

that the Landlords were required to protect her right to quiet enjoyment but did nothing and so she had to move out.

The Tenant could not point to evidence submitted, aside from evidence authored by herself, showing the upstairs tenant was excessively loud or noisy. For example, the Tenant could not point to any audio or video submitted of the noise the upstairs tenant made. The Tenant testified that she had hundreds of hours of audio or video of the noise but could not get it to the RTB.

The Landlords testified as follows. The Tenant was told prior to the tenancy that the forced air ducting in the property would cause noise. The Tenant was fine with this. The rental unit address is 100 years old. They have put insulation in. The flooring in the rental unit is vinyl, not hardwood, and does not cause noise. They do not know if the upstairs tenant was excessively loud or noisy. They are sure there was some noise transfer. They did receive complaints from the Tenant about noise from the upstairs tenant. They never received any audio or video from the Tenant to support her complaints.

The Landlords testified that over time they realised it was not only the upstairs tenant that was the issue and that the Tenant's complaints about the upstairs tenant were not credible. The Landlords testified that they did more than what was required of them to address the issues between the Tenant and upstairs tenant. The Landlords testified that they were at the rental unit address all the time. The Landlords testified that they arranged a meeting between the tenants and thought things were okay at the end of the meeting. The Landlords testified that they talked to the upstairs tenant when the Tenant made complaints about her.

***#6 - #11 Security cameras, privacy drapes, privacy tents and security camera recording device***

The Tenant testified as follows. The Landlords ignored the tenants when the tenants contacted them about moving into the rental unit. The tenants received dozens of text messages from the upstairs tenant about their arrival. The upstairs tenant had the key to the rental unit. The upstairs tenant was confrontational and told the tenants they had to listen to her. The tenants talked to the Landlords about this and the Landlords told them to work it out with the upstairs tenant. A couple days later the upstairs tenant had people over. These people were yelling at the Tenant and her daughter and ordering the Tenant to tell them things. People were following the Tenant around the property

with gardening tools that they were waiving at the Tenant. The Tenant installed security cameras.

The Tenant submitted that the Landlords are responsible for this because she told them about the above and they said they would evict the upstairs tenant but did not. The Tenant also testified that people were doing all sorts of work on the property and the Landlords made this worse. The Tenant referred to wood and cords blocking her door.

The Tenant testified that she put up curtains and tents for privacy.

I asked the Tenant to point to evidence to support her position about the upstairs tenant and others as outlined above. The Tenant pointed to photos taken April 27 and 29 as well as May 02 and 04. The Tenant testified that men were peeking in the windows of the rental unit. The Tenant testified that men were standing or staring outside the window and tools were leaned up against the window.

The Landlords denied there were workers at the rental unit or property all the time. The Landlords testified that workers attended the property twice during the tenancy. Once on September 18<sup>th</sup> to install a fan for the upstairs tenant and once to install a bike shed. The Landlords testified that there was never construction going on at the property. The Landlords testified that they never once entered the rental unit during the tenancy. The Landlords indicated the police attended once and entered in relation to fuses.

The Landlords denied that the Tenant ever complained about people following her around the property. The Landlords noted a video in evidence of the upstairs tenant turning a camera. The Landlords testified that the camera was facing the upstairs tenant's kitchen and bathroom. The Landlords said it is not true that people followed the Tenant around the property.

### ***#12 Cancelled airline to China due to safety concerns at home***

The Tenant testified as follows. The tenants were supposed to go on vacation to China. They did not feel safe leaving given issues at the rental unit. The upstairs tenant and Landlords were demanding entry into the rental unit. The Landlords would show up at all hours of the night and day once per week wanting access to the rental unit.

The Tenant could not point to documentary evidence showing the tenants cancelled a trip to China. The Tenant pointed to a document that is a confirmation of the trip.

**#13 – 14 Emergency accommodation September 18 – September 30 and September 30 – December 18**

I found the Tenant's submissions on these items unclear. I understood the Tenant to testify that the tenants were concerned about where they were going to move to because they had to move out of the rental unit given the issues raised. The Tenant testified that there was nothing in the same city as the rental unit, so the tenants moved to an Airbnb in another city. The Tenant also testified about the day the tenants moved out and stated that there were half a dozen workers at the property, the Landlords were at the property, tools were up against their windows and she called the police.

The Tenant confirmed that the tenants gave the Landlords notice ending the tenancy. The Tenant testified that the tenants left September 18, 2019 and planned to go back to the rental unit to get their belongings. The Tenant testified that when the tenants returned, the Landlords had turned their cameras and moved a statue. The Tenant testified that the tenants got their belongings out of the rental unit. The Tenant then testified that when the tenants went back to the rental unit the Landlords had started re-renting it.

The Landlords testified as follows. The Tenant did not vacate the rental unit September 18<sup>th</sup>. They heard from the upstairs tenant that the Tenant might have moved September 30<sup>th</sup>. They served notice to enter and got no response to it. The notice was there until October 13<sup>th</sup>. On September 18<sup>th</sup>, there were not half a dozen workers at the property as claimed by the Tenant. There were two workers there. This is not the date the Tenant moved.

The Landlords denied that the rental unit was so noisy that it was unbearable and the tenants had to vacate. The Landlords denied that they ever touched the Tenant's cameras or statue.

Analysis

Section 7 of the *Act* states:

7 (1) If a landlord...does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord...must compensate the [tenant] for damage or loss that results.

(2) A...tenant who claims compensation for damage or loss that results from the [landlord's] non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim.

I have reviewed the Tenant's evidence in this matter. The evidence does not tend to support the Tenant's claims. The evidence as a whole does not show that there were major issues at the rental unit as claimed by the Tenant. For the most part, the evidence shows minor issues that have been overstated. For example, the Tenant submitted emails and photos purporting to show harassment that, on their face, do not show harassment. The Tenant submitted photos about the upstairs tenant "blocking" her path and parking too close to her vehicle. In my view, these issues are inconsequential and could have been easily addressed. The Tenant submitted photos of garbage and tools by her window. The photos show common items one would expect to find in a yard. The items are not blocking the Tenant's window or the path.

When I compare the Tenant's claims, both those made in the evidence and at the hearing, with the evidence submitted, it causes me to question the weight I can give to the Tenant's testimony or to evidence authored by the Tenant. Therefore, when assessing the claims for compensation, I have considered what evidence there is before me to support the Tenant's testimony, aside from evidence authored by the Tenant.

***#1 Letter to MCFD contract cancellation***

In the absence of evidence from the Ministry showing they attended the rental unit and had concerns about the rental unit, I am not satisfied this occurred.

I also note that the Tenant's evidence does not support that the rental unit was unsafe. The Tenant did submit a photo which she indicates is of two men stealing her dresser. The Tenant did not expand on this further in the hearing and it is not clear to me how this relates to the Landlords.

I am not satisfied the Tenant is entitled to the compensation claimed.

***#2 - #5 Noise reduction rugs***

Pursuant to section 28 of the *Act*, the Tenant had a right to quiet enjoyment.

Pursuant to Policy Guideline 6, the Landlords were obligated to ensure that the Tenant's right to quiet enjoyment was protected. The Landlords can be held responsible for the actions of the upstairs tenant if the Landlords were aware of the problem and failed to take reasonable steps to correct it.

In the absence of further evidence to support the Tenant's testimony that the upstairs tenant was unreasonably loud or noisy, I am not satisfied the upstairs tenant was. The Tenant lived in a basement suite of a 100 year old house. Some noise from the upstairs tenant is to be expected. I accept the Landlords' testimony that they did take steps to address the complaints made by the Tenant about noise. I am not satisfied based on the evidence provided or pointed to that the Landlords were required to take further steps. I am not satisfied the Landlords breached the *Act*, regulations or tenancy agreement.

I am not satisfied the Tenant is entitled to the compensation claimed.

***#6 - #11 Security cameras, privacy drapes, privacy tents and security camera recording device***

Pursuant to section 28 of the *Act*, the Tenant had a right to reasonable privacy.

In the absence of further evidence to support the Tenant's testimony, I am not satisfied there were people at the rental unit address yelling at the Tenant or her daughter,



ordering the Tenant to tell them things or following the Tenant around the property with gardening tools. Nor am I satisfied in the absence of further evidence that there were privacy issues at the rental unit to such an extent that the Tenant required security cameras, curtains and tents.

I acknowledge that there are two photos of someone possibly looking into the rental unit window. I find this to be the only compelling evidence of a privacy issue in the Tenant's evidence. However, in the absence of further evidence and context about these photos, I am not satisfied there was a breach of reasonable privacy that required the Landlords to act or required the Tenant to purchase the items mentioned.

I note that the Tenant installed security cameras yet did not capture compelling evidence of the issues claimed. The only video submitted is of the upstairs tenant moving a security camera so that it is not pointed at her rental unit.

Having considered the evidence provided or pointed to, I am not satisfied there was a breach of reasonable privacy that required the Landlords to act. Nor am I satisfied the Landlords are required to compensate the Tenant for security cameras, curtains and tents she chose to purchase.

I am not satisfied the Tenant is entitled to the compensation claimed.

***#12 Cancelled airline to China due to safety concerns at home***

In the absence of documentary evidence showing the tenants cancelled a trip to China, I am not satisfied this occurred.

I am not satisfied the Tenant is entitled to the compensation claimed.

***#13 – 14 Emergency accommodation September 18 – September 30 and September 30 – December 18***

I am not satisfied based on the evidence provided or pointed to that there were major issues at the rental unit that required the tenants to move. I am not satisfied there were major noise issues. I am not satisfied there was construction at the rental unit. I am not satisfied the rental unit was unsafe. I am not satisfied there were issues at the rental unit that required the tenants to obtain emergency accommodation. The evidence shows the tenants started talking about ending the tenancy on September 01, 2019. It is the tenants who ended the tenancy. I am not satisfied the Landlords breached the

*Act*, regulations or tenancy agreement such that the tenants were required to move. I am not satisfied the Landlords are required to compensate the tenants for choosing to move.

### ***Summary***

I am not satisfied based on the evidence provided or pointed to that the Landlords breached the *Act*, regulations or tenancy agreement such that they are responsible for compensating the Tenant for the issues raised.

Given the Tenant was not successful in the Application, I decline to award her reimbursement for the \$100.00 filing fee.

The Application is dismissed without leave to re-apply.

### **Conclusion**

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 22, 2020

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Residential Tenancy Branch