



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, MNDCT, 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 an order directing the landlord to comply with the Act, regulation or tenancy agreement; for a monetary claim of \$2,500.00 for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, and to recover the cost of his filing fee.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. Two witnesses, one for the Landlord and one for the Tenant were also present and provided affirmed testimony. During the hearing the Tenant and the Landlord 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

- Should the Landlord be ordered to comply with the Act or tenancy agreement,

and if so in what way?

- Is the Tenant entitled to a monetary order, and if so, in what amount?
- 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 January 28, 2016, with a current monthly rent of \$1,250.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$337.50, and no pet damage deposit. The Parties agreed that they have lived together in the Landlord's residential properties for nine years, as the Tenant moved with the Landlord to the Landlord's new property, which also had a rental suite.

### ORDER FOR THE LANDLORD TO COMPLY

#### **A. Rent Payment Receipts**

The Tenant's first issue with the Landlord is that the Landlord does not give the Tenant a receipt for rent payments. The Landlord said: "He's been with me for almost nine years. If he needs a receipt, no problem moving on. He never really asked. No issues on my side. I will give it to him going forward."

#### **B. Heat in the Rental Unit**

The Tenant said that he had to obtain electric heaters for the rental unit, even though heat is included in the rent. He said: "I've gotten pneumonia twice this year. It's a big place and it's just as cold downstairs as it is outside."

The Landlord agreed that heat is included in the rent. He said he has two young daughters, so he is not going to have a cold house for them. He said: The whole house runs on a thermostat upstairs – see my hydro bills showing increases in costs to me.

For him to say that. . . I provided a text he sent to me saying: 'Happy Christmas, I'm sick as a dog, can you turn heat down.' This was on December 26<sup>th</sup>. I find it hard to believe that the heat is not on. I've had the heat off for nine years? Also, there is a gas fireplace that he never uses downstairs. I find it hard to believe he's cold. I don't know why he says this."

The Tenant said: There's no heat downstairs in that house. The gas fireplace has never

worked at all. He said it would cost him more money to fix and use it.”

The Landlord said that there is one thermostat in the house, and that the whole house goes on at once. The fireplace runs on gas and he’s never asked me to turn it on. There’s only a switch on the wall – it’s not rocket science. I have no problem getting that on. I’ve uploaded the [electricity] bills that is proof that heat is not turned off, and that there’s an increase in consumption . . . what am I paying for? There’s a clear cost to me in the winter time. His claim does not make sense at all.”

### **C. Noise**

The Tenant said that the noise problem has just started recently. He said:

I’d sure like to know why there’s a cutting board with a big butcher knife going on at 5 a.m. , 7 a.m. noon, 5 o’clock at night. . .I’ve told them about it, and they said you might as well get ear muffs.

The Landlord said:

I don’t know what he’s talking about. If my wife is cooking upstairs, he seems to have issues with the smallest of sounds lately. He wants us not to move upstairs. That’s not possible. Are we supposed to not move? I work full time as a corrections officer. My wife works full time, so we’re away during the day. She makes lunch for the kids and me. For him to say that we can’t even cook in our kitchen is a little much.

The Tenant said that this noise is new. “I’ve noticed it in about the last 4 months or so. I have a witness that we can hear the cutting board.” The Tenant brought his mother, A.O., in as a witness to the noise. A.O. said: “I’ve heard it too, it’s like a bang, bang, bang, bang. As for the girls, they jump off a kitchen chair and jump again and it goes Bang. He’s asked them about this lots of time.”

The Landlord said:

We’ve been in this house now four years with [the Tenant] downstairs. Nothing has changed upstairs with us, none of our behaviours have changed. My wife makes the same meals in the morning. I don’t know where this is coming from. He said it starts at 5 a.m. and continues periodically until 10 pm. It’s not possible

– I’m reading his application where he said 2 a.m., now he said 6 or 7 pm, now he’s saying 10 pm.

We both work full time, and the kids are in school. They are in swim club. We’re not here all day to be making this noise.

The Tenant said: “Why do the girls gotta do that? In June, I was home and the two of them, they were jumping off the damned furniture. I gave him a text and he said relax, it’s just the girls playing. I pay you rent to live here. I don’t need that . . . one day it was 3 days it went on.”

The Landlord said it’s just children playing.

For it to be happening all day is false, because my kids are in school and then at swim club in the evening for two plus hours, and on Monday and Saturday mornings. I find it hard to believe that they’re jumping off the furniture all day. My wife is a full-time worker as well. For him to say that is false.

The Tenant said: “There’s noise all day – when they get home from school, when they get up. Somebody’s there during the day. She works shift work.”

#### MONETARY ORDER FOR COMPENSATION UNDER THE ACT

The Tenant has claimed \$2,500.00 in compensation for the Landlord’s non-compliance with the Act or tenancy agreement, as detailed above. He said: “That number could have been ten grand or thirty thousand. This amount is two months’ rent, because I have not lived in the house for 6 or 7 weeks. That’s what it cost for me to move. I should have asked for a lot more, but I’m trying to be nice about it.”

The Tenant said:

I can’t explain how it’s affected me. The mental stress, no heat downstairs has taken a toll on me . I was at the doctor – my blood pressure is at cardiac arrest. He said you have to do something about that, because everybody has a right to peace and quiet in their own house. I have to stay somewhere else, so that I can get my mental stress level down.

I go home and I go in – twice a day, and I’ll hear the jumping and banging, I walk out of my suite. The stress I’m going through. It’s only happened within the last

year to six months that it's gotten really bad. And there's no heat.

I can't have it cold and hot like that because it makes me sick. The heat from the electric heater is how a person gets sick.

The Landlord said: "The 'last six months'? First, he said last year, then. . . I have my wife here as well. She says many times that she can hear him swearing and he turns his music up."

The Landlord's wife, K.G., said:

We are both full time workers. We're gone for the day. My husband doesn't even cook, so . . . evenings and mornings work it is done by me. The cutting board – on weekends we're gone – we're out of the house in the morning from 8 – 12. Then we're home doing normal essential stuff, groceries and laundry. We have only one day at home - Sunday. Kids have to play. When I'm cooking in the evening, I hear swearing and loud music and someone's using something to hit the walls. I'm just cutting an onion or broccoli.

### Analysis

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

Before the Parties gave testimony, I explained how I would be analyzing the evidence presented to me. A party who applies for compensation against another party has the burden of proving their claim on a balance of probabilities. Policy Guideline 16 sets out a four-part test that an applicant must prove in establishing a monetary claim. In your case, the Tenant must prove:

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

Rule 6.6 sets out the standard of proof and burden of proof in an administrative hearing like this.

## **Rule 6.6 The standard of proof and onus of proof**

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

### **ORDER FOR THE LANDLORD TO COMPLY**

#### **A. Rent Payment Receipts**

Section 26(2) states that a landlord must provide a tenant with a receipt for rent paid in cash. The Landlord said that the Tenant did not ask for receipts, but that he is willing to provide them, if that's what the Tenant wants. As such, I **Order** the Landlord to provide the Tenant with receipts for rental payments starting with the first rental payment after the date of this Decision and going forward, pursuant to section 26 of the Act.

#### **B. Heat in the Rental Unit**

The Parties agreed that the tenancy agreement requires the Landlord to provide the heat in the rental unit. The undisputed evidence is that the heat is supplied throughout the house with the thermostat in the Landlord's unit. The Landlord has agreed to connect the gas, so that the gas heater in the rental unit is available for the Tenant to use.

Section 1 of the Act includes a definition of "service or facility", which "includes any of the following that are provided or agreed to be provided by the landlord to the tenant of a rental unit. "Heating facilities or services" are included within this definition.

Section 27 of the Act sets out a landlord's obligations regarding the termination and restriction of services or facilities. It requires that a landlord must not terminate or restrict a service or facility, if it is essential to the tenant's use of the rental unit as living accommodation, or if providing the service or facility is a material term of the tenancy agreement.

Policy Guideline #22, states:

An 'essential' service or facility is one which is necessary, indispensable, or fundamental. In considering whether a service or facility is essential to the tenant's use of the rental unit as living accommodation . . . , the arbitrator will hear evidence as to the importance of the service or facility and will determine whether a reasonable person in similar circumstances would find that the loss of the service or facility has made it impossible or impractical for the tenant to use the rental unit as living accommodation. For example, an elevator in a multi-storey apartment building would be considered an essential service.

Based on the Act, Policy Guidelines, and common sense and ordinary human experience, I find that the heat in a rental unit is essential to a tenant's use of the rental unit as living accommodation. I find that while the temperature in the residential property may be sufficient for the Landlord and his family in the upper suite, the Tenant finds the rental unit in the basement suite to be insufficient.

As a result, I **Order** the Landlord to ensure that the gas fireplace in the rental unit is in working order by **September 1, 2020**.

I further **Order** the Landlord to ensure that the temperature in the rental unit does not fall below 23 degrees Celsius or 73.4 degrees Fahrenheit during the day, even if the Landlord's family is away at work and school, unless the Parties agree on another temperature level below which the temperature in the rental unit must not fall.

## **C. Noise**

### **Protection of tenant's right to quiet enjoyment**

**28** 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 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 ("PG #6") states:

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 before me overall, I find it more likely than not that the Tenant has somewhat exaggerated the amount of noise that happens at the rental unit throughout the day. The Landlord and his wife are away at work, although I appreciate that the Landlord's spouse does shift work. The evidence before me is that the children are away at school or swim club for a good part of the day.

Further, the Tenant said that "the noise problem has just started recently", and the Landlord said: "he seems to have issues with the smallest of sounds lately. He wants us not to move upstairs. That's not possible."

The Parties agree that they have lived in the same residential property for almost nine years. Children grow up, however, and their behaviour may change. The Landlord did not dispute the Tenant's evidence that the children jump from chairs and/or other furniture onto the floor, which is the Tenant's ceiling. The Landlords' comments indicated that their attitude is that "children will play". While this is true, as noted above, PG #6 states that "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."



I find that the Landlords did not make any attempt to restrict their children from this behaviour. I find that a reasonable person considering this situation would consider children jumping from furniture to be intrusive to the quiet enjoyment of people living below.

I, therefore, **Order** the Landlord to disallow their children to jump from furniture onto the floor of their home, in order to comply with the Tenant's right to quiet enjoyment of the rental unit, pursuant to section 28 of the Act. The children are free to do this activity outside.

In terms of the chopping that the Tenant says irritates him, I reject his evidence, stated or implied, that this happens repeatedly throughout the day, seven days a week. Prohibiting children from jumping on the floor from furniture is one thing; restricting the Landlord's family from preparing food is another thing. However, I strongly discourage the Landlord's family from aggravating the situation by being oblivious to the impact of noisy chopping on the Tenant's right to quiet enjoyment of the rental unit. Similarly, I urge the Tenant to be more tolerant of the Landlord's family's right to live normally in their home. Swearing and banging on the ceiling is also inappropriate behaviour for people trying to get along in a shared space. If there is problem, I encourage the Parties to talk to each other rather than reacting in anger or in vacating the rental unit to find peace elsewhere.

#### MONETARY ORDER FOR COMPENSATION UNDER THE ACT

PG #6 addresses compensation under section 67 of the Act, as follows:

##### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The Tenant has claimed \$2,500.00 in compensation for the Landlord's non-compliance with the Act or tenancy agreement, as detailed above. He said: "That number could have been ten grand or thirty thousand. This amount is two months' rent, because I have not lived in the house for 6 or 7 weeks. That's what it cost for me to move. I should have asked for a lot more, but I'm trying to be nice about it."

I accept the Tenant's evidence that he has endured mental stress from the absence of control of the heat in the rental unit and from the apparent increase in noise from upstairs. However, I find that the Tenant's evidence is that he has found these to be fairly recent events in the long-term tenancy, which raises questions in my mind about what else is new in the Tenant's life. Children's play may evolve over time; however, a Landlord's cooking habits are not likely to become noisier, suddenly.

Further, rather than raising these issues with the Landlord and trying to resolve the situation with the Landlord's family, the Tenant indicated that he lived elsewhere for approximately six weeks prior to the hearing. I find that the Tenant did not give the Landlord an opportunity to resolve the situation, and I find that two months' rent as compensation for choosing to live elsewhere is inconsistent with the Act.

However, again, I find that the Tenant has suffered mental stress in this situation. Given the evidence before me overall, and pursuant to section 67 of the Act and PG #6, I grant the Tenant an award of half a month's rent or \$625.00, as compensation for mental stress. I also award the Tenant with recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act, for a total monetary award of **\$725.00. I authorize the Tenant to deduct this amount** from one future rent payment in satisfaction of this award.

### Summary

I **Order** the Landlord to provide the Tenant with receipts for rental payments, starting with the first rental payment after the date of this Decision and going forward;

I **Order** the Landlord to ensure that the gas fireplace in the rental unit is in working order by September 1, 2020;

I **Order** the Landlord to ensure that the temperature in the rental unit does not fall below 23 degrees Celsius (73.4 degrees Fahrenheit) during the day, even if the Landlord's family is away at work and school, **unless the Parties agree** on another temperature

level, below which the temperature in the rental unit must not fall (may wish to limit the temperature to the cooler months of the year).

I **Order** the Landlord to disallow their children to jump from furniture to the floor of their home.

I award the Tenant with recovery of half a month's rent or \$625.00, as compensation for mental stress. I also award the Tenant with recovery of the \$100.00 Application filing fee pursuant to section 72 of the Act, for a total monetary award of **\$725.00**.

### Conclusion

The Tenant is partially successful in his Application for an Order for the Landlord to comply with the Act and/or the tenancy agreement. The Tenant is also partially successful in his claim for compensation for monetary loss or other money owed in the amount of \$625.00. The Tenant is also successful in his claim for recovery of the \$100.00 Application filing fee.

I grant the Tenant a monetary order under sections 67 and 72 of the Act in the amount of **\$725.00**. The Tenant is authorized to deduct this amount from one future rental payment in satisfaction of the award. This Order must be served on the Landlord by the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: June 3, 2020

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Residential Tenancy Branch