



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      Tenant: MNDL, MNDCL, FFL  
Landlord: MNDCT, FFT

### **Introduction**

This was a cross application hearing that dealt with the tenant's application pursuant to the Residential Tenancy Act (the Act) for:

- a Monetary Order for damage or compensation under the Act, pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

This hearing also dealt with the landlords' application pursuant to the Residential Tenancy Act (the Act) for:

- a Monetary Order for damages, pursuant to section 67;
- a Monetary Order for damage or compensation under the Act, pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that they were served with the other's application for dispute resolution.

### **Background/Evidence**

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlords' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2017 and has ended. Monthly rent in the amount of \$1,500.00 was payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlords did not ask the tenant to complete a move in condition inspection report and the landlords did not complete a move in condition inspection report.

Both parties agree that the subject rental property and another rental property, also owned by the landlords, share a driveway which then splits and goes to each property. The tenant resides in a house. The neighbor resides in a manufactured home.

Both parties agree that there was a previous Residential Tenancy Branch Hearing in which the landlord was granted an Order of Possession pursuant to both a One Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent, both of which the tenant sought to cancel. The decision found that the tenant failed to pay rent for the months of March, April and May contrary to section 26 of the Act, and the landlord was awarded an Order of Possession. The landlord was also awarded the Order of Possession pursuant to the One Month Notice to End Tenancy for Cause, because the tenant failed to dispute the notice within 10 days of receiving it. The hearing occurred on May 2, 2019 and the decision was rendered on May 3, 2019. The file numbers for the previous cross application are located on the cover page of this decision. The tenant testified that she moved out before she received the May 3, 2019 decision and Order of Possession.

Landlord R.F. testified that he attended at the subject rental property on May 6, 2019 to post the Order of Possession on the tenant's door. Landlord R.F. testified that the tenant was still living at the subject rental property at that time and that her children answered the door. Landlord R.F. testified that he did not regain possession of the subject rental property until May 14, 2019 at which time he changed the locks.

### Tenant's Claim

The tenant testified that she is seeking damages arising from this tenancy including:

- the replacement cost of items stolen from the subject rental property;
- the cost of counseling;
- lost wages;
- emotional stress; and
- loss of quiet enjoyment.

The tenant testified that her relationship with the landlords was very good at the beginning of the tenancy and she trusted the landlords. At the beginning of the tenancy the landlord introduced her to neighbour which whom she shares a driveway. The landlord informed her that her neighbour does some farm labour and other repairs on behalf of the landlord and that she could call on him to repair any items that required fixing. The above testimony was not disputed by the landlords.

The tenant testified to the following facts. She got to know the neighbour and his two children and the neighbour's 16-year-old daughter babysat her children. No issues arose during the first year of the tenancy.

The tenant testified that she began to experience problems with her neighbour in August of 2018 when he began sending her inappropriate pictures and text messages in the aim of starting a sexual relationship. The tenant testified that she was unable to enter any text messages, other than those provided by the landlord, because her phone was stolen.

The tenant testified that she first notified landlord R.F. of the neighbour's inappropriate conduct on September 10, 2018 via telephone. The tenant testified that the telephone call was 10 minutes long and the landlord told her that the neighbour was harmless and offered to sit down and talk it over in person, but that this never happened. The tenant entered into evidence telephone records evidencing the September 10, 2018 telephone call. The tenant testified that after September she called the landlord a couple more times about the neighbour, but the landlord didn't do anything to help her.

Landlord R.F. disputed the above testimony and testified that the September 10, 2018 telephone call regarded repairs/maintenance required at the property, not about harassment. The landlords testified that they submitted all text messages between the parties between April 21, 2018 and February 14, 2019 and that the tenant did not inform him of any harassment issues until January 24, 2019.

Landlord C.W. testified that the tenant told her in passing sometime in September 2018 that the neighbour sent her explicit pictures, but did not tell her that she felt harassed or threatened by them. Landlord C.W. testified that the tenant was free to engage in any relationship she chose and did not believe it was any of her business and was not sure why the tenant was telling her about her personal life.

A text message exchange dated September 9, 2018 between the tenant and landlord R.F. was entered into evidence. In the exchange the tenant requests some repairs to the subject rental property and the landlord replies, in part:

....I was going to ask [the neighbour] to do some of the maintenance, but I know that may be uncomfortable for you, so please tell me honestly if that is a problem?

I am working away on the west coast tomorrow, then Tuesday working locally to could come by. I have a hedge trimmer.

On September 17, 2018 the tenant texted the landlord R.F.:

I'm really not comfortable with [the neighbour] coming and doing any work at my place.

Landlord R.F. responded on September 18, 2018:

...[the neighbour] will not be helping or involved.

Landlord R.F. testified that he was aware that the tenant had some sort of failed relationship with the neighbour and that it might be awkward for her if he attended at the subject rental property for repairs and that he was trying to be sensitive to the tenant's feelings by asking her if the neighbour could help with the repairs. Landlord R.F. testified that at this time, the tenant never informed him that she felt harassed by the neighbour.

The tenant testified that she informed the landlord via text on October 3, 2018 that the neighbour put up a sign for his wood stand next to the driveway and that this reduced her visibility of the road, making entering and exiting the driveway dangerous. The tenant informed the landlord that the neighbour told her to fuck off when she asked him to move it. The October 3, 2018 text message was entered into evidence.

Landlord R.F. testified that he received the October 3, 2018 text message on October 3, 2018. Landlord R.F. testified that he attended at the neighbour's residence the same day and helped the neighbour move the wood stand and sign back from the driveway to increase visibility for the tenant. The tenant did not dispute the above testimony.

The tenant testified that on several occasions the neighbour started parking 3-4 vehicles in the shared driveway making it difficult for her to get in and out. The tenant entered into evidence a photograph of the neighbour's truck backed right up to the subject rental property.

The landlords testified that the tenant informed landlord R.F. via text message on December 17, 2018 that the neighbour parked two vehicles on either side of the shared driveway making it difficult for her to get through. The landlords testified that landlord R.F. contacted the neighbour as soon as he received the tenant's text message on December 17, 2018 and that the neighbour said he would move the cars. The landlord testified that no further complaints were made by the tenant until December 26, 2018 when the tenant texted landlord R.F. that the neighbour parked a vehicle on the shoulder of the shared driveway. The tenant included a photograph showing that the neighbour's vehicle is completely off the driveway and that the tenant's egress was not restricted.

Landlord R.F. testified that while the neighbour's parked vehicle did not block the driveway, he still contacted the neighbour on December 26, 2018 and asked him to move the vehicle. The landlords reiterated that the tenant at this point had not yet informed the landlords that she felt harassed or endangered by the neighbour and that they had only received two complaints about the neighbour's parking and one complaint about the position of his wood shack and sign in a three month period. The landlords testified that they dealt with each issue as it arose and had no reason to believe that the tenant was being harassed or that further steps were required to resolve the issues..

The tenant testified that between August and December 2018 the neighbour started waiting for her children to get off the school bus at the end of the shared driveway. The tenant testified that the neighbour would stand at the fence line between the properties and yell at the tenant and her children and run a chainsaw. The tenant testified that she notified the landlord of this via telephone and he said he would talk to the neighbour, but nothing was ever done or the neighbour was only quiet for one to two days. The landlords testified that the tenant never notified them of the above.

The tenant testified that she called landlord R.F. on December 1, 2018 and had a 12 minute conversation regarding the neighbours' harassing behaviour. The tenant entered into evidence phone records evidencing that a 12 minute conversation with the landlord occurred. The tenant testified that the landlord was very polite but dismissed her concerns and said that he would talk to the neighbour. The tenant testified that the neighbour's behaviour did not change after the December 1, 2018 call with landlord R.F.

Landlord R.F. testified that the December 1, 2018 phone conversation was about the tenant's malfunctioning dryer and that the tenant never spoke to him about the neighbour's harassing behaviour. Landlord R.F. testified that the text messages exchanged between himself and the tenant between November 29 and December 1, 2018 show that the topic of conversation at that time was the malfunctioning dryer. The text messages entered into evidence between November 29, 2019 to December 1, 2019 confirm the landlord's testimony about their content.

The tenant testified that she started getting prank calls on December 24, 2018 and she believes these were from the neighbour.

The tenant testified that between August and December 2018 the neighbour:

- played loud music early at all hours of the day and night; and
- ran noisy equipment.

The tenant entered into evidence a video of loud music coming from the neighbour's property.

The tenant entered into evidence a five-minute video of a truck parked in the shared portion of the driveway. The truck is flashing its high beams at the tenant's house at night.

The tenant testified that she called the Regional District regarding the neighbour's excessive noise as did two other people who live in the area. The tenant entered into evidence a letter from the Regional District dated January 23, 2019 which confirms receipt of the tenant's January 19, 2019 complaint. The letter states that the Regional District spoke to the property owner and the occupant and warned both that the lighting of fireworks without permits is not permitted. The letter states that "given that this breach was minor in nature no further action is required at this time."

The tenant testified that between January and March of 2019 the landlord informed her that he was going to end the tenancy because the landlords wanted to build a new home for themselves on the subject rental property. The tenant testified that the

landlord told the tenant that they would serve her with a proper Notice to End Tenancy in January of 2019 but by January 26, 2019 the tenant had not received one, so she called or texted the landlords to enquire as to when she would receive the Notice to End Tenancy.

The landlord entered into evidence a text message from the tenant dated January 23, 2019 which states:

Hi [landlord] when can I expect the end to tenancy notice?

The landlord responded on January 23, 2019:

....We are looking more closely at the start of construction of our new home on the [property] to see if we could possibly delay moving to allow your children to finish the school year without moving. That is where we are at on it. Did you want to talk more about it?

On January 24, 2019 the tenant texted the landlord:

I have an open file against [the neighbour] with the police. [The neighbour] has been threatening and harassing me and my family for months and months now. I have brought this to your attention several times August, September, October and November, and I feel as tho [sic] you have not taken it seriously. This is very serious we have a right to a safe and quiet living environment. I don't want anymore problems I have a family to raise and important job that needs my attention and I have to take care of my mental health.

This is some pics I just took.

Barbed wires right off of my driveway and a chicken in my front yard with garbage.

The landlords testified that this was the first time the tenant informed them that the neighbour was threatening or harassing her. The landlords testified that they believe the tenant sent texts between January 24, 2019 and February 14, 2019 using legal lingo in an attempt to build a fraudulent claim against them.

Landlord R.F. testified that on January 24, 2019 he received a telephone call from the regional district informing him that someone had made a complaint about garbage on the shared driveway. Landlord R.F. testified that it looked liked crows and dogs got into

someone's garbage. Landlord R.F. testified that he attended at the neighbour's house that day and the neighbour showed him that his garbage was secured and told him that it was the tenant's garbage. Landlord R.F. testified that he then attended at the tenant's home and she said that her garbage was properly secured and that it was the neighbour's garbage.

The landlord testified that he did not know who to believe and cleaned up the garbage himself.

The tenant entered into evidence a video in which loud music can be heard coming from the neighbour's home. The video is narrated by the tenant, the narration states that it is 8:00 a.m. on Saturday morning January 26, 2019.

The tenant testified that when she returned home in the evening of January 26, 2019 the shared driveway was covered in scrap metal and she could not get to the subject rental property. A photograph of same was entered into evidence.

The tenant testified that on January 26, 2019 she called the landlord about the scrap metal but the landlord did not answer his phone so she called the police who attended. The tenant testified that a police officer escorted her and her children to the house but that they couldn't do anything about the scrap metal because it is a shared driveway. The tenant testified that 35 to 40 minutes later she texted the landlord about the scrap metal in the driveway, but he did not respond.

The tenant testified that the police officer stayed with her and her children while she packed an overnight bag as she did not feel safe staying at the subject rental property. The tenant testified that the police officer escorted her back to the van but someone had flattened her tire, and the van could not be driven.

Landlord R.F. testified that he responded to the tenant's text as soon as he received it. The landlord entered into evidence a text message from the tenant at 9:49 p.m. reporting the scrap metal on the driveway and providing photographs. The landlord responded the following morning, January 27, 2019 at 5:28 a.m. as follows:

I will be out there before I leave for work this morning to find out what is going on and yet your access as soon as I can.



Landlord R.F. testified that he immediately contacted the neighbour and told him to clean up the driveway which he did on January 27, 2019. The tenant confirmed that the scrap metal was cleaned up on January 27, 2019.

The tenant testified that when she got home on January 27, 2019, she went to start a fire in the fireplace at the subject rental property and the entire living room started filling with smoke. The wood stove pipe was pulled out from the ceiling. The tenant testified that she informed the landlord about the issue but could not recall if it was by phone or other means. The tenant testified that she told the landlord that she believed [the neighbour] tampered with her stove and the landlord told her that the neighbour would not do that and dismissed her concerns.

The landlords entered into evidence a text message from landlord R.F. to the tenant dated January 27, 2019 which stated:

Hi [tenant]

I had a telephone call from a man who says he is a friend of yours. He tells me that you had a break-in at your home last night and that your woodstove pipe had been tampered with and that the air had been let out of your van tires. If that is the case, that is very concerning and needs to be reported to the police and investigated. I will then pay for the necessary repairs and claim it on the house insurance. Don't use the stove until the stovepipe has been repaired. I am leaving for work in [another city] and then [another city] this week but will be available by text message. Safety is most important.

The tenant did not dispute the landlord's testimony that a friend of hers informed the landlord about the broken stove pipe. The landlord testified that the tenant did not contact him directly, so he could not have been dismissive of her alleged claim that the neighbour was responsible for the stove damage..

The tenant testified that she did not speak with the landlord from January 29, 2019 until the May 2, 2019 hearing. The landlords testified that the tenant continued to converse with them via text until February 14, 2019. The landlords testified that the tenant made it difficult to get the stove repaired as she stopped replying in a timely manner to landlord R.F.'s text messages, which historically had been their main method of communication. The landlords entered into evidence text messages between the tenant and the landlord between February 7-12, 2019 in which the landlords attempted to get permission to enter the subject rental property for the repair to be made. The landlords testified that

they sent the tenant a notice of entry via email, mail and by posting and that the tenant finally responded on February 12, 2019.

The landlords testified that in the February 12, 2019 email the tenant alleged that the stove was not up to code and that the landlords knowingly and wilfully put her family at risk. The landlords testified that the company hired to do the repair recommended that the stove be replaced which they did. The landlords testified that they had no reason to believe the stove was unsafe and replaced it when a professional recommended they do so. The landlords testified that the tenant's story about what happened to the stove changed, initially the tenant alleged that the neighbour broke in and damaged the stove and then in a text dated February 12, 2019 the tenant states that the stove pipe moved out of position because it was missing a safety screw. Text messages evidencing same were entered into evidence.

Both parties agree that on January 30, 2019 the tenant texted landlord R.F. as follows:

The police were at my house last night they told me that [the neighbour's girlfriend] called the police on [the neighbour]. I was verbally abused by [the neighbour] when I was walking up the drive-way earlier that night. Myself and children should have a right to a safe living environment. [Landlord R.F.] this is your responsibility you are the landlord.

The landlord testified that he was contacted by police on January 30, 2019 and they informed him that the neighbour and the tenant both claimed that the other wanted a sexual relationship that was not reciprocated. Landlord R.F. testified that the police asked him who was telling the truth and he testified that he did not know.

The landlord testified that in response to the tenant's complaints about the neighbour from January 24, 2019 to January 30, 2019, the landlords personally served the neighbour with a letter on February 3, 2019 which states:

After the events of the past few months and in particular the past 10 days, it is clear that things have to change...

These events have been traumatic to my wife and me. We are not used to neighbours calling day and night with complaints, to RCMP officers calling me at work, to the Regional District Bylaw officers coming uninvited to my home, sending letters and making telephone calls, and numerous other events.

Similarly, all of this has been upsetting to our and your neighbours and your family as well I am sure.

Accordingly, and for the sake of all, I advise;

1. You are not to do any work [on the subject rental property] outside of the portion of the property which you have rented, unless authorized in writing by [landlord R.F.].
2. You are not to clutter or impede access, or interfere with people, including [the tenant] who may go into or out of the common driveway to your property or to the property currently rented to [the tenant] as normal;
3. You are to cease all work paid for by [the landlords' company] anywhere except on the parcel of land which you have rented and then only if authorized in writing;
4. If there are repairs or improvements required [to the neighbour's property], please contact [landlord R.F.] to ensure the cost of those repairs or improvements are authorized by [the landlords' company].
5. Do not rebuild the fence which you removed without authorization between the property you rented and the property currently being rented by [the tenant].
6. You are not authorized to make any expenditures on behalf of the [landlords' company] or [landlord R.F.]
7. Please continue to clean up the property you have rented and return it to the condition it was in when it was originally rented to you.

This advisement is in an effort to bring peace and enjoyment to all living at or affected by [the farm].

The tenant testified that on February 13, 2019 she sent an email to the Regional District complaining of low visibility coming in and out of the driveway and loud music from the neighbour. The email was entered into evidence. The tenant testified that the bylaw enforcement suggested she get cameras to record the neighbour's behaviours. The tenant testified that she purchased security cameras at the subject rental property because she had repeatedly sought help from the landlords, and none was provided. A receipt for cameras in the amount of \$608.81 were entered into evidence. The tenant is seeking this amount from the landlords.

Both parties agree that the One Month Notice to End Tenancy was posted on the tenant's door on February 26, 2019.

The tenant testified that on March 1, 2019 her nine-year-old daughter went to wait in the van for the tenant before going to school. After a short time, the tenant testified that her daughter ran back in the house because the neighbour ran up to her and made an ax chopping motion towards her with his hands. The tenant testified that she walked her kids to the van and the neighbour started screaming at her and threatened to kill her. The tenant testified that she called the police and the neighbour was arrested and the issued a restraining order which prevented the neighbour from returning to his rental property. The neighbour was released from custody later that day.

The tenant testified that the neighbour broke into her home on March 2, 2019 and stole items including:

- six month old laptop computer;
- six year old lawn and garden tools;
- the tenant's passport and the passport of the tenants' two children;
- baby memory books;
- makeup;
- jewellery;
- hair styling tools;
- electronics;
- i phones; and
- a scale.

The tenant entered into evidence a security camera video showing the neighbour and his dog breaking into the subject rental property. The video does not show the neighbour leaving.

The tenant testified that her daughter's pet cat also went missing and believes the neighbour killed it. The tenant entered into evidence a video of the neighbour and his dog breaking into the subject rental property.

The tenant testified that she believes the landlords did not help her and in fact encouraged the neighbour's inappropriate behaviours because they wanted her to move out. The tenant testified that the landlord received an Order from the Agricultural Land Commission for the neighbour to vacate the manufactured home he resides in. The tenant testified that the landlords relied on the neighbour as a farm hand and did not want to lose that help, so the landlords and the neighbour acted together to try and get the tenant to move out so that the neighbour could move into the subject rental property.

The tenant entered into evidence an email from the Agricultural Land Commission dated March 19, 2019 which states:

The letter sent to [the landlord] was a notice of contravention concerning dwellings on the property. I have had conversations with [the landlord] advising him that the manufactured home on the property must be occupied by immediate family only. The ALR Use Regulation does not restrict occupancy in the main house.

In other words, occupants of the main house do not need to be related to the property owner. No order was issued by the ALC to vacate the main residence of the property.

The landlords testified that the neighbour was served with a One Month Notice to End Tenancy for Cause on March 1, 2019 due to the tenant's report of the March 1, 2019 incident. The landlords testified that the neighbour did not return to his rental property after the March 2, 2019 burglary. The landlords testified that they did not re-rent the properties after the tenant and neighbour moved out because their experience of being landlords was so negative.

The landlords testified that they did not in any way encourage the neighbour's inappropriate behaviours and addressed all of the tenant's concerns in a timely manner, ultimately ending in the neighbour's eviction.

The tenant is seeking the landlord to compensate her for the items stolen by the neighbour. The tenant entered into evidence a receipt for a new laptop in the amount of \$891.90. The tenant entered into evidence the receipt for the gardening tools she purchased six years ago in the amount of \$299.95. The tenant testified that she did not replace the stolen tools because she moved into a town house complex and does not need them. The tenant entered into evidence a receipt in the amount of \$315.00 for a new adult passport. The receipt is broken down as follows:

- \$160.00- regular adult passport;
- \$110.00- urgent services; and
- \$45.00- replacement of stolen travel document.

The tenant testified that she does not have receipts for all the other items stolen but estimated their value to be \$5,000.00. The landlords testified that they are not responsible for the neighbour's illegal conduct.

The tenant testified that after the break in the tenant's mental health suffered and she had to stop working from March 2, 2019 to the end of April 2019. The tenant testified that she started a new job in the beginning of May 2019. The tenant entered into evidence a letter from a doctor which states:

Anxiety disorder, prominently generalized anxiety disorder, subclinical panic and PTSD features.

Substance use disorder, fully remitted.

Mood disorder not elsewhere classified, primarily dysthymic pattern.

Rule out sequelae of brain injury.

The tenant entered into evidence two doctor's notes dated March 3, 2019 which state:

- Needs stress leave from Mar 5 until at least April 1, 2019; and
- Needs counselling ASAP re interpersonal issues (threatening neighbour)

The tenant entered into evidence a doctor's note dated March 20, 2019 which states:

- Still not ready to return to work due to stress/anxiety issues. Hopes to return to work on May 1<sup>st</sup>. Counselling starting this week.

The tenant testified that she paid \$110.25 for counselling which she would like to recover from the landlords. A receipt for same dated March 25, 2019 was entered into evidence.

The tenant testified that she earned \$23.54 per hour and worked 69 hours biweekly. A letter from her employer stating same was entered into evidence. The tenant testified that she is seeking \$6,000.00 in lost wages for the eight weeks she was not unable to work.

The tenant testified that she is seeking \$14,829.09 for emotional stress suffered. The tenant did not provided testimony as to how this amount was calculated.

The tenant testified that she is also seeking \$6,000.00 for loss of quiet enjoyment of the subject rental property which is 50% of her rent from August 2018 to March 2019.

Landlord's Monetary Claim

The landlords testified that the following damages arose from this tenancy:

<b>Item</b>	<b>Amount</b>
Replace living room curtain rod	\$76.41
Replace living room curtains	\$89.58
Replace bedroom curtains	\$44.78
Replace family room curtain rod	\$56.31
Replace fire extinguisher	\$61.76
Garbage dump fees	\$146.25
Labour for taking garbage to the dump	\$600.00
Mileage for truck and trailer used to haul garbage to the dump	\$301.50
Replace sliding patio doors	\$760.48
Replace five screen doors	\$500.00
Replace bedroom light fixture	\$150.00
Replace hall closet doors	\$130.00
Cleaning	\$640.00
Time spent preparing for hearing	\$675.00
<b>Total</b>	<b>\$4,232.07</b>

Curtain Rods and Curtains

The landlords testified that the curtains and rods in the subject rental property were likely original to the subject rental property built in 1989. The landlords testified that the curtains and rods in the property were older but in good working order.

The landlords testified that the tenant broke the curtain rods in the living room and family room which had to be replaced. Receipts for same in the amount of \$76.41 and \$56.31 respectively, were entered into evidence.

The landlords testified that the tenant ripped the curtains in the living room and bedroom and they required replacement. Receipts for same in the amount of \$89.58 and \$44.78 respectively, were entered into evidence.

The landlords entered into evidence photographs dated June 14, 2017, which show the condition of the subject rental property just before the tenant move in. The photographs show that:

- the living room curtains are not ripped;
- the living room curtain rod is functional;
- the master bedroom curtains are not ripped;

No move in photographs of the family room were entered into evidence.

The landlords entered into evidence photographs dated May 14, 2019, which show the condition of the subject rental property on May 14, 2019. The photographs show that:

- the living room curtains are ripped;
- the living room curtain rod may be damaged- unclear from photograph; and
- the master bedroom curtains are ripped.

No move out photographs of the family room were entered into evidence.

The tenant testified that the curtains and rods at the subject rental property were in the same condition on move in as on move out.

#### Replace fire extinguisher

The landlord testified that he purchased two new fire extinguishers for the subject rental property just before the tenant moved in. The landlord testified that the tenant stole the fire extinguishers when she moved out. The landlord testified that he is only seeking the replacement cost of one of the fire extinguishers in the amount of \$61.78. A receipt for same was entered into evidence.

The tenant testified that the fire extinguishers were taken by the police for finger printing because the [neighbour] took them off the wall.



### Garbage Fees

Landlord R.F. testified that the tenant abandoned a large amount of garbage and possessions at the subject rental property which he had to haul to the dump. The landlords entered into evidence photographs dated May 14, 2020 showing a large amount of garbage and possessions left at the subject rental property. The landlord entered into evidence six garbage dump receipts totalling \$146.25.

The landlord testified that it took him four hours round trip to collect the garbage from the subject rental property, take it to the dump and return. The landlord testified that he completed six trips to the dump for a total of 24 hours spent hauling the tenant's garbage. The landlord is seeking \$25.00 per hour for 24 hours which equals \$600.00.

The landlord testified that he used his truck and trailer to take the tenant's items to the dump. The landlord testified that the round trip to and from the dump is 67 km. The landlord testified that he is seeking \$0.75 per km.  $67 \text{ km} \times 6 \text{ trips} = 402 \text{ km}$ .  $402 \text{ km} \times \$0.75 = \$301.50$ .

The tenant testified that she left the subject rental property in the same condition she received it.

### Sliding Patio Doors

Landlord L.D. testified that she was at the subject rental property until 9 p.m. on May 14, 2019, cleaning up the mess left behind by the tenant. Landlord L.D. testified that when she returned to the subject rental property on May 15, 2019 the sliding patio doors had been damaged. The landlords testified that they believed the tenant broke into the subject rental property that night to retrieve some more of her possessions and broke the door in doing so.

The landlords testified that the patio doors were likely original to the subject rental property built in 1989.

The tenant testified that she did not break into the subject rental property or damage the doors. The tenant testified that the sliding glass doors never locked properly.

The landlords testified that they have not had the doors replaced. The landlords entered into evidence a picture of sliding doors for sale in a store. The price tags read \$678.00 and \$679.00.

Replace five screen doors

The landlords testified that the tenant broke the screens in five doors at the subject rental property. The landlords entered into evidence a photograph showing a broken screen. No pre-tenancy photographs pertaining to the screens were entered into evidence. The landlords testified that the screen doors were one to two decades old. The landlords testified that the screen doors have not yet been replaced. The landlords entered into evidence a picture of screen doors for sale in a store. The price tags read \$108.00, \$98.00, and \$98.76 each.

The tenant testified that the screens were in the same condition on move in as move out.

Replace bedroom light fixture

The landlords testified that the tenant damaged the light fixture. A photograph dated May 14, 2019 of a damaged light fixture was entered into evidence. No photographs of the move in condition of light fixture were entered into evidence. The landlords testified that the light fixture has not yet been repaired. The landlords entered into evidence a picture of a light fixture for sale in a store. The price tag reads \$149.00. The landlords testified that the light fixture was more than 20 years old.

The tenant testified that the light fixture was in the same condition on move in as move out.

Replace hall closet doors

The landlords testified that the tenant broke the hall closet doors. The landlords testified that the doors were likely original to the 1989 property. No receipt, estimate or photographs of closet doors for sale were entered into evidence. The landlords testified that they are seeking \$130.00 for their replacement.

The tenant testified that the closet doors were in the same condition on move in as move out.

### Cleaning

Landlord L.D. testified that the tenant left the subject rental property filthy. Photographs dated May 14, 2019 showing same were entered into evidence. Landlord L.D. testified that it took her 32 hours to clean. The landlords are seeking \$20.00 per hour for a total of \$640.00.

The tenant testified that there was some normal wear and tear and that she had not been living at the subject rental property since May 1, 2019 and is not responsible for the mess made after she left.

### Time spent preparing for hearing

The landlords testified that they spent 27 hours preparing for arbitration and are seeking \$25.00 per hour for a total of \$675.00.

## **Analysis**

### Tenant's Claim

Section 28 of the *Act* states that 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.

Residential Policy Guideline 6 states that 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.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

The text message evidence shows that landlord R.F. and the tenant communicated frequently through text and that their relationship was respectful and cordial from April 21, 2018 until early January 2019.

Given the extent and frequency of the text communications between the parties, in which the tenant informed the landlord of a variety of issues that arose during the normal course of the tenancy, I find it highly unlikely that the tenant would have only communicated her harassment concerns to the landlord via telephone and not text from August to early January of 2019. I find that the tenant has not proved that the telephone calls between herself and the landlord were about the neighbour harassing or threatening her as the landlords deny it and the tenant has not provided other evidence to prove her claim.

I find that the tenant made the following three complaints about the neighbour between August 2018 and January 23, 2019:

- October 3, 2018- neighbour's wood stand and sign impairing visibility;
- December 17, 2018- neighbour parked vehicles in the shared driveway; and
- December 26, 2018- neighbour parked vehicle in shared driveway.

I find that the landlord immediately dealt with the tenant's concerns and had them rectified. I find that while the tenant may have been threatened and harassed by the neighbour between August and January 23, 2019, the tenant has not proved that she informed the landlords of this harassment until January 24, 2019.

I find that the landlords were informed of the neighbour's harassment on January 24, 26, and 30, 2019 and the neighbour received a warning letter about his conduct on February 3, 2019. I find that the landlords did not encourage the neighbour to harass or threaten the tenant in an effort to protect their farm labour as the landlords discontinued the neighbour's employment.

I find that on March 1, 2019 the neighbour threatened the tenant. I find that the landlord acted reasonably in issuing the neighbour a notice to end tenancy for his actions.

Pursuant to my above findings, I conclude that the landlords took reasonable steps to correct the unreasonable disturbance caused by the neighbour, once they became aware of the harassment on January 24, 2019. I therefore find that the landlords did not breach section 28 of the *Act* and the tenant is not entitled to damages for loss of quiet enjoyment.

Section 67 of the *Act* states:

Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due. To be successful in a monetary claim, the tenant must establish all four of the following points:

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

Failure to prove one of the above points means the claim fails.

The remainder of the tenant's claim is for damages arising out of the neighbour's conduct. I find that the landlords are not responsible for the criminal activity of the neighbour. I find that the tenant has not proved that the landlords breached any part of the *Act*, regulation or tenancy agreement. As stated above, in order to be successful in her monetary claim, the tenant must prove that the landlords breached the *Act*, regulation or tenancy agreement. As the tenant has not done so, I dismiss the remainder of her claim without leave to reapply.

## Landlord's Claim

### Curtains, curtain rods, doors and light fixtures

Residential Tenancy Guide #40 states:

This guideline is a general guide for determining the useful life of building elements for considering applications for additional rent increases and determining damages which the director has the authority to determine under the Residential Tenancy Act and the Manufactured Home Park Tenancy Act . Useful life is the expected lifetime, or the acceptable period of use, of an item under normal circumstances.

When applied to damage(s) caused by a tenant, the tenant's guests or the tenant's pets, the arbitrator may consider the useful life of a building element and the age of the item. Landlords should provide evidence showing the age of the item at the time of replacement and the cost of the replacement building item. That evidence may be in the form of work orders, invoices or other documentary evidence. If the arbitrator finds that a landlord makes repairs to a rental unit due to damage caused by the tenant, the arbitrator may consider the age of the item at the time of replacement and the useful life of the item when calculating the tenant's responsibility for the cost or replacement....

If a building element does not appear in the table, the useful life will be determined with reference to items with similar characteristics in the table or information published by the manufacturer. Parties to dispute resolution may submit evidence for the useful life of a building element. Evidence may include documentation from the manufacturer for the particular item claimed.

Policy Guideline #40 states the following useful life for the following items:

<b>Item</b>	<b>Useful Life in Years</b>
Drapes	10
Windows	15
Doors	20
Light fixtures	15

Curtain rods are not listed in Policy Guideline #40. I find that curtain rods likely have a similar useful life as windows. Based on the landlords' testimony, I find that the useful

life of the curtains/drapes, light fixture, patio doors, screen doors and closet doors were past their useful life. I therefore dismiss the landlord's claim for those items.

#### Cleaning and garbage fees

The tenant testified that she moved out of the subject rental property on May 1, 2019, one day prior to the May 2, 2019 hearing. The landlords testified that they did not gain possession until May 14, 2019 and that the tenant was still residing at the subject rental property on May 6, 2019 when the Order of Possession and Monetary Order were posted on the door of the subject rental property.

I find that the tenant's testimony does not accord with common sense. Had the tenant moved out of the subject rental property on May 1, 2019 then there would have been no point to dispute the notices to end tenancy the following day, May 2, 2019. The May 3, 2019 decision makes no mention of the tenant having moved out of the subject rental property. I prefer the landlords' testimony over that of the tenants. I find that the landlords' did not regain possession of the subject rental property until May 14, 2019.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

The landlords entered into evidence photographic evidence showing that the subject rental property was clean when the tenant moved in and very dirty and full of garbage and abandoned items when the tenant moved out. The move out photographs were taken on May 14, 2019, the day the landlords regained possession of the subject rental property. I find that the tenant breached section 37(2)(a) of the *Act* by failing to clean the subject rental property at the end of the tenancy and by leaving piles of garbage and abandoned possessions at the subject rental property.

I accept landlord L.D.'s testimony that it took her 32 hours to clean the subject rental property. I find that the landlords are entitled to compensation for those hours at a rate of \$20.00 per hour for a total of \$640.00.

I accept the landlords' testimony that landlord R.F. took six loads of material left at the subject rental property by the tenant to the dump as is evidenced by the photographs and receipts entered into evidence. I find that the landlords are entitled to the dump costs of \$146.25.

I accept landlord R.F.'s testimony that the six trips to the dump took him 24 hours to complete. I find that the landlords are entitled to recover time spent taking the tenant's abandoned items to the dump at a rate of \$25.00 per hour for a total of \$600.00. I accept the landlords claim for mileage as follows: 67 km x 6 trips = 402 km. 402 km x \$0.75 = \$301.50.

I find that the tenant was untruthful when she testified that she left the subject rental property in the same condition as when she moved in.

#### Fire Extinguisher

I accept the tenant's testimony that the fire extinguishers were taken as evidence by the police. I therefore dismiss the landlords' claim for the cost of their replacement.

#### Hearing Preparation

The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of the Act. With the exception of compensation for filing the application, the Act does not allow an applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefore dismiss the landlords' claim for time spent preparing for, or participating in, these proceedings.

#### Filing fee

As the landlords were successful in their application for dispute resolution, I find that they are entitled to recover the \$100.00 filing fee from the tenant, pursuant to section 72 of the *Act*.

#### Conclusion

The tenant's application is dismissed without leave to reapply.

I issue a Monetary Order to the landlords in the amount of \$1,787.75.

The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.



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: June 24, 2020

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Residential Tenancy Branch