



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC FFT

### Introduction

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

- an order that the landlords comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- authorization to recover their filing fee from the landlord pursuant to section 72

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

As both parties were present service was confirmed. The parties each testified that they were in receipt of the materials and I find each party was served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. Both parties submitted voluminous written submissions and excerpts from their ongoing correspondence regarding their tenancy and dispute. The principal aspects of the claim and my findings around each are set out below.

This tenancy began on April 1, 2019 and the current monthly rent is \$2,000.00 payable on the first of each month. The rental unit is a suite in a detached home with the landlord occupying the other portion of the building. The property contains a large deck where the landlord's hot tub unit is located. A copy of the written tenancy agreement was submitted into evidence.

The tenant submits that the outdoor deck is included in the rental agreement and should be reserved for the exclusive use of the tenant. The parties agree that the landlord has regularly used the hot tub unit on the deck throughout the tenancy. The tenant characterizes the landlord's behaviour as "harassing, bullying, intimidating" and that the landlord has yelled at the tenant's children causing them to feel unwelcome on the rental property. The tenant submits that the landlord routinely violates the tenant's right to privacy and freedom from unreasonable disturbance through their presence and activity on and about the rental property.

The landlord disputes that the outdoor deck is reserved the exclusive use of the tenant. The landlord acknowledges that the written tenancy agreement is silent on the point but submits that there were verbal discussions with the tenant and that the intention of the parties was that the deck would be shared.

### Analysis

Based on the submissions of the parties I find insufficient evidence that there has been a breach of the Act, regulations or tenancy agreement on the part of the landlord that would give rise to an order for compliance.

I accept the evidence of the parties that the written tenancy agreement does not explicitly address the use of the outdoor deck or the adjoining yard. I find that this silence can not be interpreted that the areas are reserved for the exclusive use of the tenant. Based on the surrounding evidence, including the correspondence and

communications between the parties and their past conduct, I find it more likely that the outdoor area was intended to be common property shared by the occupants. I do not find that the landlord's use of the outdoor deck and yard to be a breach of the tenancy agreement.

While I accept the evidence of the parties that this relationship has been strained, I find there is no requirement in the Act, regulations or tenancy agreement that parties act in a civil manner at all times. I find that the evidence demonstrates ongoing disagreements between the parties and there are some references to heated exchanges. I find that select instances of raised voices or flared tempers is not sufficient to find that there has been a breach of the right to quiet enjoyment under the Act. I find insufficient evidence to determine that there has been frequent and ongoing disturbance that would form a basis for a claim.

I find that much of the submissions of both parties to be subjective complaints. I find that the grievances submitted by the tenant, while indicative of a strained landlord-tenant relationship, does not demonstrate a breach of the Act, regulations or tenancy agreement such that it would give rise to a claim.

I find on a balance of probabilities that the tenant has not met their evidentiary onus and therefore dismiss their application.

### Conclusion

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

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

Dated: July 9, 2020

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Residential Tenancy Branch