



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code: MNDCT FFT

### Introduction

The tenant seeks compensation in the amount of \$12,800.00 against their former landlords pursuant to section 67 of the *Residential Tenancy Act* ("Act"). In addition, they seek recovery of the \$100.00 filing fee under section 72(1) of the Act.

The tenant filed an application for dispute resolution on July 20, 2020 and a hearing was held on December 14, 2020. The tenant, a witness for the tenant, one of the landlords, and landlords' counsel attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

### Issues

1. Is the tenant entitled to any or all of the compensation claimed?
2. Is the tenant entitled to recovery of the filing fee?

### Background and Evidence

I only review and consider oral and documentary evidence meeting the requirements of the *Rules of Procedure*, to which I was referred, and which is relevant to determining the issues. Only relevant evidence needed to explain my decision is reproduced below.

The tenancy in this dispute began on February 15, 2018 and ended on February 29, 2020. Monthly rent was \$1,280.00 and the tenant paid a security deposit of \$625.00. A copy of the written Residential Tenancy Agreement was submitted into evidence.

The tenant brings an application against their former landlords for, as described in the application (reproduced as written):

Loss of quiet enjoyment and continued harassment Told I could not have guests  
Constant intrusion of privacy through surveillance Late night visits under false  
pretenses False accusations of smoking and vaping Verbal notice of threat for  
eviction for false accusations Written notice of threat of eviction for false  
accusations Physical, verbal and psychological harassment from May 2019-Feb  
29 2020 and beyond False notice to end of tenancy (16year-old son)

The tenant seeks \$12,800.00 in compensation for their loss of quiet enjoyment, continued harassment, and, for physical, verbal and psychological harassment for the period of May 2019 to February 29, 2020. The tenant testified that this entire claim is about the number of occasions and severity of the incidents, in which the landlords (primarily the male landlord) was “very aggressive in nature.”

She testified that the landlord accused her of smoking and vaping and was told that she could not have overnight guests. There were security cameras outside of the rental unit that the tenant alleges were used by the landlords to monitor her movement. The landlord would “corner me” and come “knocking on the door” without proper notice.

The false accusations purportedly occurred over many months. They culminated in a letter from the landlords’ lawyer (not the lawyer who attended this hearing, it should be noted) in which the lawyer put the tenant on notice for smoking and vaping, and, that an eviction could result. The tenant was “made to feel unsafe”.

Because the recollection of, and testifying about, the many incidents was difficult for the tenant, they referred me to a list of incidents. Submitted into evidence was a one-page letter (“short chronology of major events”) that references 13 dates. There is little to no notation next to each date. Two dates have brief notations: September 5, 2019 is the letter of notice from the landlords’ lawyer (along with a reference to the tenant’s response to that letter) and November 28, 2019, referencing a notice to end tenancy.

Also submitted into evidence and referred to by the tenant during the hearing is a 4-page “Chronology of the major events as they have escalated.” Many of the incidents and dates pre-date the May 2019 to February 29, 2020 duration for which the tenant claims compensation, and as such I need not consider or refer to those.

There is a total of 19 dates listed in the lengthier document; some of the dates match those of the shorter list, while some do not. For several of the dates listed in the lengthier document, there are no notations or descriptions.

The tenant's witness briefly testified about an incident that occurred on October 16, 2018, in which the landlord showed up unexpectedly while the tenant and her friend were having dinner. I note that this incident occurred more than half a year before the start of the alleged incidents for which the tenant seeks compensation, and as such I will not repeat the testimony regarding this incident. The witness referred to "a few instances" where the tenant called him because the tenant felt threatened by the landlord. He could not recall the dates on which these incidents occurred. He also spoke of the "aggressive nature" of the landlord. Finally, he noted that the tenant is highly allergic to things like cigarette smoke, and that any allegations of smoking or vaping are "totally false."

The tenant submitted into evidence several letters from third parties, none of whom attended the hearing to corroborate or verify the contents of the letters. I will address this in my analysis, below. Also submitted into evidence were several documents and photographs related to a previous arbitration hearing that are unrelated to this dispute.

The tenant clarified, after being asked a few questions by landlords' counsel, that she is seeking compensation for (1) the severity of impact of the landlord's conduct on her mental health, and (2) for the notice to end tenancy and threat of eviction, done both verbally and in writing. It was clarified through further discussion between me, the tenant, and landlords' counsel, that any compensation related to whether the Two Month Notice to End Tenancy was fulfilled or not would have to be brought by way of separate application pursuant to section 51 of the Act. In summary, the tenant clarified and reiterated that her claim was based on the landlords breaching her privacy rights, loss of quiet enjoyment, and harassment.

Landlords' counsel referred me to her and the landlords' written submissions, which I will not reproduce but that I have carefully considered. It must be noted, however, that the landlords vehemently deny all of the tenant's claims.

### Analysis

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.

When an applicant seeks compensation under the Act, they must prove on a balance of probabilities each of the four criteria before compensation may be considered (the "four-part test"):

1. has the respondent party to a tenancy agreement failed to comply with the Act, regulations, or the tenancy agreement?
2. if yes, did the loss or damage result from the non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize the damage or loss?

The above-noted criteria are based on sections 7 and 67 of the Act, which state:

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

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

...

67 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.

Have the landlords breached the Act? The tenant argues that the landlords breached section 28 of the Act. 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.

In this case, there is a plethora of claims but a paucity of evidence. Numerous allegations of harassment, very aggressive behavior, aggressiveness, threats, false accusations, feelings of being unsafe, negative mental and physical impact, and so on, are made. However, there is no documentary (video, audio, or written—beyond that of uncorroborated third-party statements) evidence of any of the landlords' actions. A list of dates with a few descriptions of the alleged incidents is insufficient evidence proving that such incidents occurred. There are no photographs of the security cameras and no documentary evidence that the cameras breached the tenant's privacy.

The third-party letters cannot be corroborated because the authors of those letters did not attend the hearing to affirm the veracity of the content. I place little evidentiary weight on those letters, and I place no evidentiary weight on internet forum comments where third parties make negative remarks about the landlords.

As for the tenant's witness who did testify, he recalled one incident that significantly predates the time period in which the landlords allegedly harassed the tenant, and he was unable to provide any specific dates or details of more recent incidents.

I do not find that one letter from the landlords' lawyer regarding possible smoking or vaping a breach of section 28 of the Act. A landlord is within their legal rights to bring to a tenant's attention issues regarding possible breaches of their tenancy. Nor do I find that the service of a valid Two Month Notice to End Tenancy to be a breach of the Act; a landlord is, again, within their legal right under the Act to issue such a Notice.

When two parties to a dispute provide equally reasonable or possible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence *over and above* their testimony to establish their claim. In this case, I find that the tenant has failed to provide any evidence that the landlords breached section 28 of the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that the landlords breached the Act, the regulations, or the tenancy agreement. As the tenant has not proven the first criterion of the above-noted four-part test I need not consider the remaining three criteria.

As the tenant was not successful in their application, I decline to grant recovery of the application filing fee under section 72 of the Act.

Conclusion

**I hereby dismiss the tenant's application, without leave to reapply.**

This decision is final and binding and is made on authority delegated to me by the Director under section 9.1(1) of the Act.

Dated: December 14, 2020

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Residential Tenancy Branch