



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CITYVIEWS VILLAGE INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, OLC

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62.

The landlords' agent and the tenant's advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 25 minutes.

The tenant's "witness LW" was excluded from the outset of the hearing. The tenant's advocate stated that she did not want to recall this witness to give testimony, when given the opportunity to do so.

The landlords' agent confirmed that he was the director and property manager for the landlord company named in this application and that he had permission to speak on its behalf. He also claimed that he had permission to represent the female landlord named in this application. The tenant's advocate confirmed that she had permission to represent the tenant named in this application.

The landlords' agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's advocate confirmed receipt of the landlords' evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlords were duly served with the tenant's application and the tenant was duly served with the landlords' evidence.

I explained the hearing and settlement process to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with this hearing and they wanted me to make a decision regarding this application.

### Issues to be Decided

Is the tenant entitled to a monetary award for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

### Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on January 1, 2009. Both parties signed a written tenancy agreement. Monthly rent in the amount of \$711.00 is payable on the first day of each month. A security deposit of \$335.00 was paid and the landlords continue to retain this deposit. The tenant continues to reside in the rental unit.

The tenant seeks a monetary order of \$600.00 and orders requiring the landlords to comply.

The tenant's advocate stated the following facts. The tenant is seeking orders under sections 47 and 52 of the *Act*, section 9 of the schedule to the *Regulation* regarding guests, Rule 6.7 of the Residential Tenancy Branch *Rules of Procedure* ("*Rules*") regarding agents and advocates, and section 28 of the *Act* and Residential Tenancy Policy Guideline 6 regarding quiet enjoyment. The tenant seeks that the female landlord issue a written apology to him and that the landlords issue a clarified, written policy to all tenants regarding guests in the rental building.

The tenant's advocate stated the following facts. On December 14, the tenant received a notice regarding lease violations, indicating that the tenant's lease would be terminated if he did not correct his "strong, unpleasant smell." The tenant provided a

copy of this notice. The landlords did not comply with the form and content requirement under section 52 of the *Act*, to issue an approved notice pursuant to section 47 of the *Act*. This caused the tenant stress. On December 19, the tenant's advocate visited the tenant and did not notice any smell. In October and November, the landlords conducted inspections at the rental property and tried to pressure the tenant to move out. The tenant is a "poor, Indigenous man" with a disability, so he is vulnerable. The tenant misspelled his name under the landlord's section of the written tenancy agreement and signed a new section 5 in the addendum to the tenancy agreement without reading it. This section is unconscionable because it states that the tenant cannot smoke on his balcony, when he always did so before. If the tenant looked at this section and actually read it, he would not have signed it.

The tenant's advocate stated the following facts. The landlords issued the tenant multiple notices to leave the property on January 12, 14, and 19. They attempted to violate the tenant's right to quiet enjoyment and attempted to bar his visitors, even though the landlords are not permitted to restrict the tenant's guests. The female landlord tried to restrict the tenant's advocate from visiting the tenant on January 14. On March 4, the tenant's advocate went to speak to the tenant, and she was being recorded on video by the female landlord. A notice was given by the landlords to the tenant, which misrepresents the law and was designed to intimidate the tenant. Rule 6.7 of the *Rules* permits the tenant to be represented by an agent or advocate without any special license.

The tenant's advocate stated the following facts. The landlords have exploited the fact that the tenant is a weaker party. The landlords have violated Residential Tenancy Policy Guideline 16, regarding a loss of quiet enjoyment. The tenant seeks \$150.00 for the landlords falsely alleging that the tenant smells. The tenant seeks \$450.00 for "emotional stress," for the female landlord saying that the tenant smells bad and for the landlords limiting the tenant's rights to an advocate.

The landlords' agent stated the following facts. The landlords dispute the tenant's entire application. The rental building joined a non-smoking organization. The tenant agreed by signing the lease. Some of the tenants did not agree and still smoke on their balconies. The landlords did not block any visitors for the tenant. The tenant's advocate was putting flyers in the doors of other tenants in the rental building and the landlords received complaints from these people about solicitation. That is why a letter was sent by the landlords to the tenant regarding his advocate. An inspection of the rental unit was done, there was a health and safety issue with the tenant, there were

complaints from other tenants in the rental building, and the quiet enjoyment of all tenants have to be balanced, not just the tenant's right.

The tenant's advocate stated the following in response to the landlords' agent's testimony. The landlords' notice to the tenant was regarding smell, not a clutter complaint, as claimed by the landlords' agent. The landlords have not provided a record to the tenant of other tenants' complaints at the rental property. The tenant's advocate did not engage in solicitation at the rental property, as she did not issue flyers to other tenants in the rental building, and the landlords have no proof of same. The landlords are trying to stop her from helping the tenant.

### Analysis

### Legislation

Section 28 of the *Act* deals with the right to quiet enjoyment (my emphasis added):

- 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.*

Residential Tenancy Policy Guideline 6 "Entitlement to Quiet Enjoyment" states the following, in part (my emphasis added):

*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.*

### Orders to Comply

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, without leave to reapply.

During the hearing, I notified the tenant's advocate that I could not issue an order compelling the female landlord to issue a written apology to the tenant, for comments regarding smell made to the tenant. The tenant's advocate did not identify any section of the *Act* that requires a landlord to apologize to a tenant for behaviour that the tenant thinks is wrong or hurtful.

Similarly, I informed the tenant's advocate that I could not issue an order that the landlords issue a clarified, written policy to all tenants regarding guests at the rental property. The landlords are required to comply with the *Act*, regarding guests at the rental property. I find that the tenant's advocate did not identify any specific guests or dates/times when the tenant was prevented from seeing guests at the rental property. In fact, the tenant's advocate claimed that she visited and spoke to the tenant on multiple occasions at the rental property, notably on January 14 and March 4. The tenant's advocate did not identify any section of the *Act* that requires landlords to issue written policies to all tenants of a rental property. It is up to landlords to manage a rental property as they see fit, in accordance with the *Act*. Further, as noted to both parties during the hearing, this application concerns issues relating to the tenant only, since the tenant did not make an application on behalf of all tenants at the rental property. No other tenants appeared at this hearing to pursue any applications relating to their own tenancies.

I find that the landlords did not prevent the tenant from having an advocate represent him at this hearing, as per Rule 6.7 of the *Rules*. The tenant's advocate spoke freely

and represented the tenant at this hearing, regarding this application, as noted throughout this decision.

I cannot order the landlords to issue a notice to end tenancy to the tenant, as per section 47 of the *Act*. It is up to the landlords to determine if or when it is appropriate to issue notices to end tenancy to a tenant. The landlords are required to issue any notices to end tenancy in accordance with section 52 of the *Act*, whether under section 47 or another section of the *Act*. The tenant did not vacate the rental unit or end his tenancy, pursuant to any notices or letters from the landlords.

I do not issue any orders regarding smoking at the rental property. I find that the tenant failed to show that he was prevented from smoking on his balcony, as he did prior to signing the new addendum to the tenancy agreement, as the tenant's advocate did not state the dates/times of such actions by the landlords. It is the tenant's obligation to read and inform himself of any written documents that he signs with the landlords. The tenant's advocate failed to show that the tenant experienced duress or coercion when signing the addendum. The tenant has an advocate that has been assisting him with tenancy matters during this tenancy, as noted by his advocate throughout this hearing. The tenant has the right to hire legal counsel and to consult with agents and advocates, prior to signing written documents with the landlords.

### Monetary Compensation

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlords in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

During the hearing, I notified the tenant's advocate about the above test. I informed her that it was the tenant's burden of proof, on a balance of probabilities, to present and prove the tenant's monetary claim.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for monetary compensation of \$600.00, without leave to reapply.

I find that the tenant did not provide sufficient evidence to substantiate his monetary claim for \$600.00 and failed to satisfy the above four-part test. The tenant's advocate did not indicate how the tenant arrived at the number of \$150.00 for "false allegations" regarding "smell." The tenant's advocate did not indicate how the tenant arrived at the number of \$450.00 for "emotional stress" and "limiting rights" to the tenant's advocate.

I find that the tenant failed to provide sufficient evidence of a loss of quiet enjoyment, emotional stress, or limiting the tenant's rights to an advocate.

I find that the tenant's claims, regarding the landlords' verbal comments and issuing notices to the tenant, were a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above. I find that the tenant did not provide sufficient evidence of a loss of quiet enjoyment.

I find that the tenant failed to provide sufficient evidence of limiting the tenant's rights to an advocate. As noted above, the tenant has an advocate who represented him at this hearing and has met with the tenant at the rental property, to assist him with tenancy issues.

I find that the tenant failed to provide sufficient evidence of emotional stress. I find that the tenant's advocate failed to point to any medical documentation to show that the tenant suffered emotional stress. I find that the tenant's advocate did not indicate what specific losses and damages the tenant suffered as a result of this claim.

### Conclusion

The tenant's entire application is dismissed 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: March 26, 2021

---

Residential Tenancy Branch