



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HUGH & MCKINNON REALTY  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      PSF, LRE, OLC, RR

### Introduction

On April 3, 2021, the Tenant applied for a Dispute Resolution proceeding seeking a provision of services and facilities pursuant to Section 62 of the *Residential Tenancy Act* (the “*Act*”), seeking to restrict the right of the Landlord to access the rental unit pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking a rent reduction pursuant to Section 65 of the *Act*.

The Tenant attended the hearing, and B.P., D.D., and M.H. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Notice of Hearing package to the Landlord by email on April 7, 2021. D.D. confirmed that the Landlord received this package and was prepared to proceed despite this package being served by email. As such, I am satisfied that the Landlord was sufficiently served the Notice of Hearing package.

The Tenant also advised that she served her evidence to the Landlord on April 9, 2021 by registered mail. However, she did not check to see if the Landlord could view her

digital evidence, pursuant to Rule 3.10.5 of the Rules of Procedure. She stated that she served additional late evidence to the Landlord by email on July 13 or 14, 2021. D.D. confirmed that the Landlord received the Tenant's initial evidence package and that the videos could be viewed. However, while the Landlord received the Tenant's late evidence, as this was received within days of the hearing, they did not have sufficient time to respond to it. As such, I have only accepted the Tenant's evidence served April 9, 2021 and this will be the only evidence considered when rendering this Decision.

D.D. advised that the Landlord's evidence was served to the Tenant by registered mail and email on July 12, 2021 and the Tenant confirmed that she received this evidence in both manners on or around July 13, 2021. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and the Tenant was informed that I have the discretion to sever and dismiss unrelated claims. The Tenant advised that she had her claims narrowed down to a request for quiet enjoyment and a rent reduction commensurate with that loss. As such, this hearing primarily addressed these issues, and the other claims were dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to have her right to quiet enjoyment restored?
- Is the Tenant entitled to a rent reduction?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2019, that rent was established at \$700.00 per month, and that it was due on the first day of each month. A security deposit was not paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

The Tenant submitted a considerable amount of evidence and her claims on this Application were vague and wide ranging. As such, she was advised at the start of the hearing that she was required to limit her claims to related issues. She stated that she wanted to address her loss of quiet enjoyment caused by the upstairs tenants, and she requested a rent reduction of **\$700.00** per month, starting in October 2019, as compensation for these issues.

The Tenant was informed that the onus is on her to outline the specifics of her claims, and to support the legitimacy of her allegations by directly referencing her evidence. She was provided with in excess of 40 minutes to make submissions with respect to these claims. However, she was unable to present clear, or direct testimony and she was unable to sufficiently refer to her submitted evidence.

She testified that the problems with the tenants upstairs started in the winter months of 2019, and while she does not know what started these issues, she speculated that the pandemic caused them to “act crazy”. She stated that the upstairs tenants would shout and yell at her when they did not get what they wanted and that she attempted to talk with them about any issues. However, they would not have a normal conversation with her.

She referenced a video submitted as evidence dated April 2, 2020 where she asked the upstairs tenants to lock a gate, that was part of the common area, at night. It is her belief that they did not have to use this gate. Regardless, she approached them at approximately 11:45 PM to talk to them about this issue. She stated that they became angry and swore at her, which she considered to be verbal assault.

She referenced a video submitted as evidence dated May 22, 2020 where she advised that the upstairs tenant swore at her after demanding access to the rental unit. She stated that she sent an email, to the Landlord, from the upstairs tenant requesting this access, but this issue was ignored by the Landlord.

She advised that she first raised her concerns about the upstairs tenants' behaviour to the Landlord on June 5, 2020 via an email; however, the Landlord ignored her complaints. Even though she stated that the issues began in late 2019, she submitted that the reason she waited until June 2020 to bring this to the Landlord's attention was because she attempted to handle this situation herself.

B.P. advised that with respect to the gate issue in the common area, he stated that the upstairs tenants sometimes forgot to lock it, so the Tenant put her own lock on it and did not provide a key to the upstairs tenants. This caused tension between the two parties. Representatives for the Landlord attempted to mediate this issue by speaking with both parties and ensuring that both parties had a key to this lock.

He acknowledged that the upstairs tenants get upset with the Tenant; however, this is in response to the Tenant's behaviour as the Tenant continually confronts the upstairs tenants and records them. The Tenant is the source of the tension between the parties as she intentionally antagonizes them. He stated that the police have been called due to the Tenant's harassing behaviour, and while there is a police file, he is unaware of what action the police have taken. He referenced documentary evidence from the upstairs tenants about the ongoing harassment and the result of this harassment on their daughter's health.

He testified that bylaw officers have been called due to the Tenant spreading food scraps and compost on the lawn, which has attracted rodents. As well, he submitted that the Tenant has caused numerous issues with contractors and inspectors as she would cancel scheduled appointments.

He confirmed that the Tenant first brought up concerns with the upstairs tenants to the Landlord in June 2020 and that representatives for the Landlord investigated these issues. They hired a company to speak with the parties, solutions were provided, and the parties were encouraged to be respectful with one another. However, he advised that this was not particularly successful as the Tenant does most of the talking and this is a significant part of the problem because of the antagonistic manner with which the Tenant acts.

He referred to documentary evidence submitted to demonstrate that the Tenant's problematic behaviour is the source of the tension between the parties.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* pertains to the Tenant's right to quiet enjoyment of the rental unit.

Section 67 of the *Act* allows for compensation to be awarded should there be a breach of the *Act*.

In addition, I find it important to note that with respect to the Tenant's request for a rent reduction, when establishing if monetary compensation is warranted, Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding the Tenant's claim of a loss of quiet enjoyment, I find that the Tenant was unable to present her case adequately and could not explain the nature of her complaints fully. From what I understood, it was her belief that the manner with which the upstairs tenants spoke to her was inappropriate, and she considered this to be verbal assault. However, when reviewing the totality of the evidence before me, I do not find that this is necessarily an accurate portrayal of the situation. While I accept that the upstairs tenants appear combative, belligerent, and inappropriate, it is apparent to me from the Tenant's own evidence that the upstairs tenants are reacting in this manner because they are constantly confronted by the Tenant about issues that the Tenant is not happy with.

It is incumbent on people that share a property to work together peacefully to solve any issues between them. If this is not possible, and there are contraventions of the *Act*, then one of the parties should bring the issues up to the Landlord's attention to investigate and/or mediate the situation. However, it is still up to the parties to work together in a mature manner to resolve any personal differences that they may have with each other.

In the circumstances described before me, it is not clear what specific breaches of the *Act* have been committed by the upstairs tenants. However, it is evident that it is more likely than not that both tenants of the rental property have been having difficulty living together and have been antagonistic towards each other, instead of attempting to live in a shared property amicably.

While I have little doubt that the upstairs tenants are behaving in a manner that is detrimental to their tenancy, I am satisfied that the Tenant is also acting in a manner that is jeopardizing her tenancy as well. This is evident in the scenario described by the Tenant when she confronted the upstairs tenants around midnight on April 2, 2020 about an issue with the common area gate. Common sense and ordinary human experience would dictate that approaching the upstairs tenants this late at night surely would have likely elicited a negative reaction, especially given the fact that the Tenant was also recording this interaction with a camera. There is no reason that the Tenant could not have approached the upstairs tenants to address this issue at a more reasonable hour in the day, and in a less confrontational manner.

When reviewing the videos submitted by the Tenant, I find it important to note that such evidence can support what the Tenant is alleging. However, it can also reveal other aspects of interactions between the parties that have not been considered by the Tenant. While it is the Tenant's belief that these videos depict the upstairs tenants' conduct and behaviour, I also find it reasonable that they are acting in this manner as they are constantly confronted by the Tenant with her camera about whatever issues are bothering her. Based on the number of videos submitted, and of the content within, I am satisfied that the manner with which the Tenant approaches the upstairs tenants, to bring issues of concern to their attention, is not conducive to any positive problem solving between the parties. Rather, the Tenant is elevating the tension between the parties by attempting to deal with the situations in this manner.

As I am satisfied that the Tenant is at least partially responsible for the discord between the tenants, I do not find that she has established a claim of a loss of quiet enjoyment of

the rental unit. Furthermore, I do not find that she is entitled to a rent reduction for a situation that she is partly responsible for creating and exacerbating. Ultimately, I am not satisfied that the Tenant has sufficiently established her position and as a result, I dismiss her claims in their entirety.

### Conclusion

Based on my findings above, I dismiss the Tenant's Application for an Order for quiet enjoyment and a rent reduction in its entirety. The Tenant's other claims on this Application are dismissed with 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 28, 2021

---

Residential Tenancy Branch