



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      LRE, OLC, FFT, MNDCT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on March 18, 2021 (the "Application"). The Tenants applied for the following, pursuant to the *Residential Tenancy Act* (the "Act");

- an order that the Landlord comply with the regulations, tenancy agreement or the *Act*;
- an order restricting or suspending the Landlord's right to enter;
- a monetary order for damage or compensation; and
- an order granting the return of the filing fee.

The Tenants, the Landlord, the Landlord's Agent M.M. and the Landlord's representative L.W. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to an order restricting the Landlord's right to enter the rental unit, pursuant to Section 70 of the *Act*?

3. Are the Tenants entitled to monetary compensation pursuant to Section 67 of the Act?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 1, 2020. Currently, the Tenants pay rent to the Landlord in the amount of \$2,600.00 on the first day of each month. The Tenants paid a security deposit in the amount of \$1,300.00, which the Landlord continues to hold.

The Tenant stated the parties had been friends prior to the commencement of the tenancy. The Tenant stated that his family decided to rent the Landlord's rental property, which he thought meant he had exclusive use of the entire home and yard. The Tenant stated that since the start of the tenancy, the Landlord has had his possessions in; a storage room inside the home, the garage, and a shed in the backyard. The Tenant stated that the Landlord attends the rental unit on little to no notice to gain access to these areas. Furthermore, the Landlord has been maintaining the yard, which further impacts the Tenants' privacy. As such, the Tenant is seeking an order that the Landlord is not permitted to attend the rental property and to regain exclusive possession of the rental property.

The Tenant also stated that the Landlord will sometimes call before attending the rental unit, however, if the Tenants do not answer, he attends anyways. The Tenant stated that the Landlord has become rude and threatening toward the Tenants making them feel uncomfortable and breaches their quiet enjoyments of the rental property. The Tenants stated that the Landlord has tried to end their tenancy unlawfully. As such, the Tenants are claiming for monetary compensation equivalent to twelve months of rent, \$31,200.00.

The Landlord responded by stating that the parties had a verbal agreement at the start of the tenancy where it was agreed that the Landlord would have the right to access the storage room, garage, shed, and be able to maintain the yard. The Landlord stated that he's maintained this arrangement during each tenancy he has had without issues. The Landlord stated that once the parties began to experience some conflict in their relationship, that is when the issues relating to the Landlord's space has come into question.

The Landlord denied that he has been harassing or threatening to the Tenants. The Landlord stated that due to the conflict between them, he stated that he had asked the

Tenants to vacate the rental property at the end of the fixed term tenancy. The Landlord indicated that he was not aware at the time that tenancy continue thereafter.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- Loss of access to any part of the residential property provided under a tenancy agreement;
- Loss of a service or facility provided under a tenancy agreement;
- Loss of quiet enjoyment;

- Loss of rental income that was to be received under a tenancy agreement and costs associated; and
- Damage to a person, including both physical and mental

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. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In this case, although there are no written terms in the tenancy agreement which would indicate that the Landlord has use of certain areas of the rental property, I find that it is more likely than not that the parties had a verbal agreement at the start of the tenancy with respect the Landlord's use of the storage room in the rental unit, garage, and the shed. Furthermore, I accept that the Landlord is responsible for maintaining the yard.

I find that it is more likely than not, that once the parties began to experience conflict in their relationship, the Tenants were no longer accepting of the Landlord's attendance at the rental property, seeking privacy and exclusive use of the property. I find that the Landlord is permitted to have continued access to the storage room, garage, shed and to maintain the yard, however, I order that the Landlord is to comply with the Act, in relation to providing the Tenants with proper Notice prior to attending the rental property;

Section 29 of the Act states;

(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

With respect to the Tenants' claim for monetary compensation in the amount of \$31,200.00, I find Tenants have provided insufficient evidence to demonstrate a loss of access or use of the rental property. As previously mentioned, I accept there was a verbal agreement between the parties at the start of the tenancy surrounding the Landlord's right access the storage room, garage, shed, and yard.

I accept that at the start of the tenancy, when the parties shared a good relationship, it had been sufficient for the Landlord to call the Tenants' prior to attending the rental unit. Now that the relationship has degraded, the Landlord is to provide written notice to the Tenants in accordance with Section 29 of the *Act*. Furthermore, I accept that the Landlord had been mistaken with respect to the tenancy ending at the end of the fixed term, but I accept that the tenancy has in fact continued until it is ended in accordance with the *Act*.

In light of the above, I dismiss the Tenant's claim for monetary compensation without leave to reapply. As the Tenants were successful in demonstrating that the Landlord had not been adhering to Section 29 of the Act with respect to accessing the rental property, I find that the Tenants are entitled to the return of the \$100.00 filing fee which may be deducted from one (1) future rent payment.

### Conclusion

The Landlord is permitted to attend the rental property in order to access the storage room, garage, and shed, as well as to maintain the yard at the rental property. The Landlord is to provide the Tenants adequate notice of entry in accordance with Section 29 of the Act. The Tenants' claim for monetary compensation is dismissed without leave. The Tenants' are entitled to the return of the \$100.00 filing fee which may be deducted from one (1) future rent payment.

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 20, 2021

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Residential Tenancy Branch