



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REVELSTOKE PROPERTY SERVICES and [tenant  
name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **CNC, OLC, FFT**

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application 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. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

The landlord confirmed receipt of the tenant's application, evidence and subsequent amendments. Based on the testimony I find the landlord duly served with the tenant's materials in accordance with sections 88 and 89 of the Act.

The tenant disputed that they were served with the landlord's materials.

At the outset of the hearing the parties testified that the tenancy has ended with the tenant vacating the rental unit. The tenant withdrew the portion of their application disputing the 1 Month Notice.

Preliminary Issue – Res Judicata

The legal principle of *res judicata* prevents an applicant from pursuing a claim that has already been conclusively decided. A final and binding decision is not an invitation for parties to submit additional documentary evidence to bolster their arguments and position or to reargue matters that have been conclusively decided.

The parties agree that there have been two earlier applications by the tenant under the file numbers on the first page of this decision. In each of the previous applications the tenant was seeking an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

In the November 10, 2020 decision the tenant sought an order that the landlord comply with section 32(1) of the Act and maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and making it suitable for occupation.

In the October 27, 2021 decision the tenant's application for an order that the landlord comply stemmed from a loss of quiet enjoyment for which the tenant was seeking a monetary award. In that decision the presiding arbitrator summarized the tenant's claim as follows:

The tenant argued that she would be entitled to a full rent indemnification for May, June, and July 2021 as the result of the significant loss of quiet enjoyment caused by the 2021 Work.

The landlord submits that the issue of quiet enjoyment has been conclusively dealt with in the previous hearing and the tenant's present application is barred by the principle of *res judicata*.

The tenant submits that their current application seeking a monetary award for the landlord's failure to comply with the Act, regulations or tenancy agreement arises not from construction work but what the tenant characterizes as harassment and intimidation on the part of the landlord and their agents.

Based on the submission of the parties I find that the present application is separate and distinct from previous applications brought by the tenant. I have reviewed the previous decisions and I am satisfied that the previous applications dealt solely with the

impact of the need for repairs and the subsequent construction work undertaken. I find that the present claim for compensation for what the tenant characterizes as harassment and intimidation may involve the same parties and stem from the same tenancy but is a distinct and separate action not previously argued or considered. I therefore find that the present application is not barred by the principles of *res judicata* and estoppel and allow the matter to proceed.

#### Issue(s) to be Decided

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

Is the tenant entitled to a monetary award as claimed?

#### 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. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in July 2017. The monthly rent at the end of the tenancy was \$1,000.00 payable on the first of the month. The rental unit is a suite in a multi-unit building.

The tenant submits that they suffered from a campaign of harassment and intimidation on the part of the landlord and their agents. The tenant submits that the landlord ignored requests for repairs and maintenance, issued multiple warning letters and notices to end tenancy without basis, allowed workers on the rental property to conduct themselves in a disruptive manner and have inappropriately communicated with the tenant by email despite requests to stop. The tenant cites instances where they found interactions with the landlord to be intimidating, dismissive or adversarial. The tenant testified that the landlord's agents have frightened her by knocking on their door requesting entry without sufficient notice. The tenant further submits that the landlord has failed to maintain the rental property in a suitable condition with garbage from neighboring units attracting bears and other wild animals.

The tenant submits that the landlord has breached the Act by failing to provide quiet enjoyment of the rental unit to the tenant and they seek a monetary award in the amount of \$2,500.00.

## Analysis

As set out in Residential Tenancy Rule of Procedure 6.6 the onus to establish their claim on a balance of probabilities lies with the applicant.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 28 of the *Residential Tenancy Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

**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 further discusses quiet enjoyment and provides that:

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 a 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 covenant of 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.

Based on the totality of the evidence I find the tenant has not met their onus on a balance of probabilities. I find the tenant's submissions to be subjective, hyperbolic and beyond what would be considered reasonable under the circumstances.

I do not find that the volume or contents of communication between the parties to be either so frequent or inappropriate as to be characterized as harassment. Similarly, I find the tenant's description of the landlord's agents knocking on the rental unit door as intimidating or threatening to have little foundation. I do not find the mere presence of the landlord or their agent at a rental unit requesting access to be reasonably described as harassment or a breach of the *Act*. Based on the evidence I find that the conduct of the landlord and their agents were within what would reasonably be expected in the course of their duties.

Much of the evidence of the tenant is irrelevant to the matter at hand. I find that the ongoing construction work to be an issue conclusively dealt with in the previous hearing and of no effect on the present application. News articles are of limited probative value. I also find the tenant's submission of audio recordings of advice received from the Branch to be of little assistance as they are of no binding effect.

Taken in its entirety I find that the tenant has not met their evidentiary burden to establish that there has been a breach on the part of the landlord that would give rise to a monetary claim. Consequently, I dismiss the tenant's application in its entirety without leave to reapply.

#### 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: November 9, 2021