



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNR, MNDCT, DRI, PSF, OLC**

### Introduction

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

- cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46;
- a monetary award for damages and loss pursuant to section 67;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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 tenant was represented by counsel. The landlords were represented by their agents.

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.

As both parties were present service was confirmed. The parties each testified that they received the respective materials. While the landlord mentioned that some of the tenant's evidence was received outside of the timeline provided in Rule of Procedure 3.14, based on their testimony I find the materials were received, there has been sufficient time to review the materials in detail, and there is no unreasonable prejudice

to the parties or a breach of the principles of natural justice to allow their inclusion. Accordingly, I find each party served with all materials in accordance with sections 88 and 89 of the *Act*, and in any event sufficiently served in accordance with section 71.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. The tenant submitted numerous pieces of individual evidence in a haphazard and poorly organized manner. The tenant filed many individual files in a variety of formats instead of a single pdf file with numbered pages. The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. Files are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. I find the poor presentation, especially given that tenant is represented by counsel, to detrimentally affect the strength of their submissions. While I have not excluded any of the documentary evidence of either party, I parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

#### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award as claimed?

What determination should be made on the rent increase?

Should the landlord be ordered to provide services or facilities under the tenancy agreement?

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

#### 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.

The parties agree on the following facts. The landlords assumed this periodic tenancy on May 1, 2021 when they purchased the rental property. The tenant was occupying the rental unit since 2014. Monthly rent is \$450.00 payable on the first of each month. A security deposit of \$225.00 was paid at the start of the tenancy and is still held by the landlords. The rental unit is a basement suite in a detached home.

There is no written tenancy agreement. The tenant submits that the tenancy includes access to laundry facilities, working internet connection, garbage collection and mailbox on the property. The tenant submits that since the rental property was purchased by the landlord they have lost access to these services and facilities. The tenant now seeks a monetary award of \$2,000.00 representing the value of these services and the additional monetary losses they incurred as a result of their being withheld. The tenant seeks an order that the landlord provide laundry and internet access.

The parties agree that garbage collection services is now available to the tenant and that they have made alternate arrangements to receive mail. The tenant submits into evidence copies of text message correspondence with the previous landlord where they are provided access to the laundry facilities and internet services.

The rental unit is a basement suite in a detached home with the other portion of the building occupied by different occupants. The tenant complains that there has been excess noise from the other occupants since they began residing in the property in the summer of 2021. The tenant submits that they have contacted the police about the level and timing of the noise from the neighbors on multiple occasions. The tenant submitted multiple recordings of the neighbors taken from within the rental suite.

The tenant submits that the landlord advised them that rent would be increased to \$500.00 monthly. The parties agree that no notice of rent increase was ever issued. The tenant submits that they have attempted to pay rent at the rate of \$450.00 each month by Interact e-transfer to the email address provided by the landlord. The landlord has declined to accept the payments and no rent has been paid since the tenancy was assumed.

The landlord issued a 10 Day Notice dated July 10, 2021. The notice indicates a rental arrear of \$1,500.00 (\$500 x 3 months). The landlord testified that they received email notification of an Interact e-transfer payment in May 2021 but were unable to deposit the funds due to some technical difficulties. The landlord said they have not received any of the subsequent email notifications from the tenant or any financial institution.

The landlord submits that they have no information from the previous property owner that internet or laundry access is a component of this tenancy. The landlord said they have inquired with neighbors if there are any issues with the level, frequency or timing of noise caused by the occupants of the building and have been told there are no issues.

### Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based.

In the present case the tenant received a 10 Day Notice on July 11, 2021 indicating a rental arrear of \$1,500.00 and filed their application to dispute the notice on July 14, 2021. As such, I find the tenant was within the statutory timeline to file their application.

The landlord testified that they were erroneously informed that monthly rent for this tenancy was \$500.00 and realized, after the 10 Day Notice was issued, that the rent is \$450.00. Therefore, as the rent arrear indicated of \$1,500.00 is incorrect the notice does not comply with the form and content requirements of section 52 of the *Act*. Nevertheless, pursuant to section 68(1) as it is apparent that the parties understood that the figure was incorrect I allow for the notice to be amended to indicate the correct arrear of \$1,350.00.

Based on the evidence it is clear that the tenant made full payment of the amount of \$1,350.00 on July 7, 2021 by Interac e-transfer. I find the landlord's failure to accept these payments and deposit them does not negate that fact that payments were made in the appropriate manner. Based on the documentary evidence, confirmed by the landlord at the hearing, I note that the payments were issued to the correct email address or phone number of the landlord and their failure to accept these payments, whether arising from their refusal or technical errors on the part of the financial institution does not rebut the fact that payments were made.

If the landlord was unable to access these payments or required another address or alternative method be used the onus was on them to inform the tenant of an acceptable method for payment. The landlord is in the business of accepting payment for rental units and they ought to have sufficient acumen to accept payment through a method as popular and prevalent as Interact transfer. I find the landlord's testimony that they did not receive notification of payments or that they simply failed to follow up with the tenant after one attempt at payment failed to have little credibility.

I find that the rental arrear for this tenancy arises not from the tenant's failure to make payments as required but the landlord's failure to deposit these payments as would reasonably be expected.

Accordingly, I find that the 10 Day Notice is of no further force or effect. This tenancy continues pursuant to the tenancy agreement until ended in accordance with the Act.

I am satisfied on a balance of probabilities that the tenancy agreement contains an implied term that internet services and laundry facilities are included in the monthly rent. I find the series of correspondence submitted by the tenant clearly indicate that these services were provided to the tenant throughout the tenancy. The previous property owner and the present landlord have both failed to prepare a tenancy agreement in writing as required under section 13(1) of the *Act*. I find that it is not available for the landlord to breach their requirement under the *Act* by failing to document the agreement in writing and rely upon this silence to interpret ambiguities in the agreement in a manner beneficial to them.

While I understand that the landlord assumed this tenancy and is relying upon the limited documents and information that was provided to them, I find sufficient evidence to establish that internet services and access to laundry facilities is a component of this tenancy. Accordingly, I order that the landlord resume these services for the tenant.

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.

The tenant submits that the loss of services has resulted in a loss in the value of the tenancy as well as additional costs incurred. While I find that there has been some loss in the value of this tenancy due to the landlord cutting off access to internet services and laundry I find insufficient evidence that to support the full monetary amount claimed. The tenant provided some estimates of their costs but little actual invoices or receipts. I find little evidence of the impact that the withheld services had on this tenancy or the tenant's daily routine and standard of living.

Based on the evidence I find that the loss of the laundry and internet had some detrimental impact on the value of this tenancy. I find the impact to be noticeable but slight. Under the circumstances I find that a monetary award in the amount of \$315.00, representing a loss of \$45.00 (10% of the monthly rent for this tenancy) for seven months to be appropriate.

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 evidence I find that the conduct of the other occupant of the building has had some detrimental impact on the tenant but I find insufficient evidence that the level,

frequency or duration of the disturbance is such that it could be characterized as unreasonable.

I find the video recordings submitted by the tenant contains audible sounds of activities but I find little evidence that they are at such a volume that it would be considered an unreasonable disturbance. I find the tenant's submissions to mostly consist of subjective complaints that are not reflected in the evidence submitted. I find the characterization of the sound audible as unreasonable or an interference with the tenant's right to quiet enjoyment to be hyperbolic. I find the tenant's evidence of complaints to the police to be of little probative value as it is open to anyone to call and make complaints regardless of the underlying facts. I accept the undisputed testimony of the landlord that they have followed up on noise complaints by seeking other witnesses and speaking with the occupants.

I find insufficient evidence that the noise level on the part of the other occupants of the building is so frequent, invasive or loud as to be considered an unreasonable disturbance. I find insufficient evidence that the landlord has breached the Act by failing to respond to the tenant's complaints in a reasonable manner. Consequently, I dismiss this portion of the application.

I find that there has been no rental increase for this tenancy. The landlord testified that they understand that the monthly rent for this tenancy is \$450.00 and the previous reference to a \$500.00 rent was based on incorrect information. As I find that no notice of rental increase has been issued and the parties agree that the monthly rent is \$450.00 there is no basis to make a determination on this portion of the application.

### Conclusion

The tenant's application to cancel the 10 Day Notice is granted. The Notice is of no further force or effect. This tenancy continues until ended in accordance with the Act.

I issue a monetary award in the tenant's favour in the amount of \$315.00. As this tenancy is continuing the tenant may satisfy this monetary award by making a one-time deduction of that amount from their next monthly rent payment.

The landlord is ordered to provide internet access and laundry services to the tenant. The landlord is further ordered to comply with section 13(1) of the *Act* by preparing in

writing the terms of this tenancy agreement including that the monthly rent is \$450.00 and that laundry and internet services are included in the rent.

The balance of the tenant's 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: November 16, 2021

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Residential Tenancy Branch