



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The hearing did not conclude on the first date scheduled, and I adjourned the hearing to continue; my Interim Decision was provided to the parties.

The landlord and both tenants attended the hearing on both scheduled dates, and the landlord was accompanied by an agent. Both tenants and the landlord and the landlord's agent each gave affirmed testimony and the parties were given the opportunity to question each other.

At the commencement of the first day of the hearing, the landlord indicated that video files provided by the tenants on a thumb drive were not accessible by the landlord or the landlord's agent, and on January 13, 2022 the landlord advised the tenants that a paper copy would be required. I reserved my Decision with respect to the admissibility of the evidence on the thumb drive.

On the second day of the hearing the tenants indicated that they gave the landlord all evidence that could be on paper. The landlord's agent testified that the transcripts of videos that the tenants provided were inaccurate, incomplete and the tenants chose what to describe. The landlord and the landlord's agent requested paper because they had no easy access to display the digital evidence during the hearing, and a request for hard

copies was made. The tenants left it to the last minute, or until about January 22, 2022. Neither the landlord nor the landlord's agent have a thumb drive or a computer.

The Rules of Procedure deal with digital evidence:

### **3.10.5 Confirmation of access to digital evidence**

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence. Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15. Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

### **3.12 Willful or recurring failure**

The arbitrator may refuse to accept evidence if the arbitrator determines that there has been a willful or recurring failure to comply with the Act, Rules of Procedure or an order made through the dispute resolution process, or if, for some other reason, the acceptance of the evidence would prejudice the other party or result in a breach of the principles of natural justice.

Considering the Rules of Procedure and affirmed testimony of the landlord's agent with respect to not being able to view the digital evidence, I decline to consider any of the tenants' digital evidence. All other evidence has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

- Have the tenants established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically to provide quiet enjoyment of the rental unit?
- Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages for loss of quiet enjoyment?

#### Background and Evidence

#### EVIDENCE AND TESTIMONY OF THE TENANTS:

**The first tenant** (NB) testified that this fixed-term tenancy began on December 15, 2017 and reverted to a month-to-month tenancy after December 15, 2018 and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00, both of which were transferred to a new landlord in a sale of the property which took place on December 16, 2021. The rental unit is the upper level of a house, and the lower level was also tenanted until the end of October, 2021. A copy of the tenancy agreement has been provided for this hearing, which names one of the tenants by a different surname; the tenant changed the name, but the tenancy agreement refers to the tenant.

The tenant further testified that the tenants paid rent in full for December, 2021 to the landlord named in this hearing and the landlord's agent. The tenants were not informed of the change of landlord, and the lawyer who looked over the sale said that half a month's rent wasn't forwarded to the new owner, and the new owner is still waiting for the tenants to pay the \$750.00 that was already paid and not transferred in the sale.

The tenant also testified that there has been an extreme loss of quiet enjoyment over the past 4 years under the management of the landlord named in this application and the

landlord's agent. March 3, 2018 was the tenants' first complaint of the tenants in the lower suite smoking in the house, which was rented as non-smoking property and a term in the tenancy agreement. No one acted on that complaint, except the landlord said he'd talk to the tenants in the lower level, but it continued to be a problem and the tenants complained again in November, with no follow-up by the landlord about steps taken to resolve the issue. The other tenant (BS) was friendly to that tenant and asked him to not smoke on the property or in the house, and that he was making a lot of noise.

In July, 2021 the other tenant (BS) complained to the landlord about smoking and noise in a text message, a copy of which has been provided for this hearing. The landlord said the lower level tenant would be much more aware of the vents, but smoking and excessive noise continued.

The landlord suggested a house meeting and air the grievances, wanting the tenants to negotiate why smoking was a problem, but the tenants had no interest because he had verbally harassed the tenant previously. Instead of evicting the other tenants, the landlord wanted to negotiate. The tenant reminded the landlord about the number of warnings they should have had and showed the landlord cigarette butts on the property as well as a photograph from a doorbell camera taken July 8, which was 2 days after the landlord said they wouldn't be smoking. There had been incidents that week, such as yelling from the basement and online streaming in vulgar terms. The tenant in the lower level admits in the digital images to smoking in the house. After having lived through 4 years or so of smoking, the tenants told the landlord that he had to give formal warning to the tenant in the lower level, which he did on July 14. The same day, the landlord gave the tenants a warning letter saying sarcastically that the other tenant (BS) peed on property, making the family in the lower level uncomfortable. That was the first time the tenants heard about it. The tenants had to basically corner the landlord to give a warning letter to the tenants in the lower level.

On August 4 the tenant sent an email to the landlord stating that the lower level tenant was still smoking, harassing, and making noises during quiet time, but did not get a reply. On September 16, the tenant pleaded with the landlord to do something. His response was that tenants have all the rights.

Thirteen days later the landlord's agent tried to assist and the parties met on September 29 for a 2 hour meeting about issues and the tenants gave her ample evidence. The landlord's agent was all for evicting the tenants in the lower level, saying that the tenants should put all of their evidence and present a compelling case which would take 4 or 5 days work. After seeing videos, the landlord's agent was appalled and said it was

completely unacceptable and talked about moving forward with evicting the lower level tenants. However, no notice to end the tenancy was given to the tenants in the lower level.

The tenants in the lower level gave a notice to end the tenancy to the landlord effective at the end of October, 2021, but continued to smoke in the house and allow guests to smoke on the property all through the month of October.

On October 17, 2021 the landlord's solution says, "They're out soon anyway." Then the landlord brought up new claims of the tenants harassing the tenants in the lower level. The lower level tenants deny it and the landlord doesn't know who to believe even though he got video proof and refused to acknowledge receipt.

Two days after the landlord picked up the Dispute Resolution documents, the tenants received warnings to evict for issues the tenants have never heard of before, including a warning saying that the tenants had refused the landlord entry.

The tenant further testified that on October 23, 2021 the tenants emailed the landlord named in this application saying that the landlord's agent will be blocked due to her harassment, and the tenants received 4 more warnings in December, 2021 after the house sold. The evidence shows that the landlord didn't put much stock in the complaints and was sick of complaints and told the tenants to not worry about it. One night the tenants texted the landlord at 2:06 a.m. saying the lower level tenant was still smoking and yelling and asking the landlord to log on to "Twitch," a social media site, but the landlord waited a few days. The tenants have made many suggestions including other accommodations.

The tenants have suffered disruption of sleep during quiet hours, yelling and no regard by the landlord or other tenants. The tenants have been shut down, ignored and harassed by the landlord to keep the tenants quiet, causing psychological damages, loss of sleep by the lower level tenants terrorizing the tenants.

**The second tenant (BS)** is the father of the first tenant, and testified that the on October 29, 2021 the tenants sent a letter to the landlord named in this application asking that he stop harassing the tenants. The tenants also got a warning letter from the landlord's agent stating that the tenants would be evicted if the tenants didn't give the emergency access code for the rental unit to her. On October 30 the doorbell video captures the tenant from the lower level smoking on the property again, which was the last day of their tenancy. They were also smoking weed with a group of 5 or 6 people. The next day, the landlord's

agent attended to do an inspection, and told the lower level tenants they were great tenants.

The landlord's agent was on the property on November 17, 2021 to cut a lock on the tenant's outside storage after threatening that she would do that.

The tenants received an email from the landlord's agent about a change of landlord from the landlord and the purchaser. The tenants could not have paid half of the rent because they didn't know about the change prior to the first of the month when rent is due. The tenants still have not received their money back, and the new owner said he would wait until the landlord returns the overpayment to the tenants.

The landlord's agent neglected her duties. Police knocked on the door of the tenants in the lower level on October 3 and no one answered. The police followed up twice and advised the tenants that the tenants in the lower level were issued a criminal harassment warning.

#### EVIDENCE AND TESTIMONY OF THE LANDLORD:

**The landlord** (VH) testified that on March 13, 2018 the tenants complained about people in the lower level smoking, and the landlord spoke to them. They agreed to not smoke. It wasn't until 3 years later, on July 4, 2021 the tenants complained about smoking and cigarette butts. The landlord again spoke to the tenants in the lower level who categorically denied smoking in the house, and no smoke was noticed by the landlord inside. The landlord again told them to ensure there was no smoking in the house or near windows, but the tenants in the lower level said they weren't smoking anyway, so it wasn't a big deal.

A couple of time the tenants complained, but then frequently starting in July, 2021 when they weren't getting along with the tenants in the lower level, who had the same rights as the other tenants. They were kind but being bullied by the tenants in the upper level. The tenant in the lower level of the rental home weighs about 100 pounds, a slight Asian girl.

The tenants tried to bully the landlord into evicting the tenants in the lower level, but the landlord testified that he ought to have evicted the tenants in the upper level. The tenants made allegations that were untrue and unfounded, mostly about noise and smoking. The lower level tenants would hear the upper level tenants as well, which is natural.

The landlord wanted to have a house meeting since the tenants were not getting along. The tenants in the upper level seemed to feel they had sole propriety and wanted the landlord to evict the lower level tenants. The tenant (BS) wouldn't attend a joint meeting, and was not willing to make anything enjoyable in the house for anyone. The landlord met with tenants separately and the tenant (BS) showed the landlord something on line and the landlord wrote up the downstairs tenants for noise, then discovered that the tenant (BS) was urinating or masturbating in the back yard. The tenants in the lower level, as well as their parents and the landlord's agent saw him with his penis in his hand. It definitely happened more than once.

The landlord notified the tenants in September, 2021 that the landlord's agent would be taking over as property manager, so the tenants should not have continued to complain to the landlord. The landlord believed the tenants in the lower level, not the upper level tenants.

In September, 2021 the tenants in the lower level gave notice to end their tenancy because they were uncomfortable with the tenant (BS) in the house, and they moved out October 31. They are still being stalked, which is admitted by the tenant (BS) even in November. The tenants are abusive and the tenant (BS) tries to intimidate people all the time.

**The landlord's agent** (SL) testified that the rental home belongs to her parents, and the landlord (VH) was helping out as property manager until the landlord's agent took over on September 27, 2021. The tenants were advised of that by email, and responded.

Just before Christmas, 2021 the tenant (NB) sent a text to the landlord's agent demanding that half of December's rent be returned. After the holiday, the landlord's agent emailed the tenant asking for more information. The tenant gave no context or information, just that she wants half of the rent back. The tenant has proof that the rent was paid to give to the new owner which should be ample. The adjustments are between the buyer and the seller, done by the buyer's lawyer and provided to the sellers. The sellers have not been contacted about it after completion. The tenants should not be involved in that, and it's not clear why the tenants haven't shown that proof to the current landlord.

The tenants' complaints about smoking were sporadic and isolated over 3 years, which would be a very temporary discomfort. Any complaints were addressed in a meaningful way, and the landlord's agent tried to mediate. The tenants did not mitigate, but provoked, harassed and showed increased hostility toward the tenants in the lower level. The tenants made the final moving day harder by changing a lock on the back fence, a

common area, without permission from the landlord, knowing the tenants were moving out that day, so the tenants from the lower level couldn't deposit garbage. The tenants also parked their car half way across the driveway making it difficult for the lower level tenants to navigate the moving trucks.

There are other houses close by and people in the area pass by. The tenants often didn't close windows, so it's conceivable smoke would go into the house, as evidenced by the tenants' transcript saying the tenants can hear footsteps; it's soft crush in the driveway so couldn't be heard unless a window was fully open.

The tenants were purposeful in intimidating and provoking the lower level tenants, which was amplified during the last portion of their tenancy. There was significant hostility once the lower level tenants gave notice to end their tenancy. The lower level tenants had as much rights and there was no compassion for the lower level tenants.

The tenant (BS) has made a fake Linkedin account, which has creeped out the tenants from the lower level and are afraid he may have found other information without their knowledge. The tenant (BS) uses a name of "Hooligan" which is intimidating with an underlining intent, meaning "gangster," or similar. The name is threatening.

The landlord's agent also testified that the tenants refused to deal with the landlord's agent because the lower level tenants were not being evicted, even though the tenants were well aware that the landlord's agent was taking over as property manager.

On September 29, 2021 the landlord's agent had a 2 hour meeting with the tenants in the lower level and at no time was there any smell of any kind of smoke inside the unit or on the property. The landlord's agent considered issuing a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities based on what the tenants had expressed, and a previous written warning was given to the lower level tenants. The landlord's agent thought it might be reasonable to end their tenancy, but the tenants in the upper level were over-reacting. The police told the lower level tenants that they weren't doing anything illegal.

The tenants continued to badger the landlord's agent about evicting the lower level tenants, but they did not like the way it was being managed because there was no eviction. The tenants are of their own demise. It is utterly false that the landlord refused to act. The tenants also claimed that the landlord's agent was harassing them, but served the Hearing Package to the previous property manager (VH) who lives in a different City. The video that the landlord's agent was shown by the tenants was grainy showing an individual walking down the driveway holding something in the person's hand, but nothing was put to the person's mouth, and the landlord's agent never smelled smoke in the lower level rental



unit, having been there twice and then consistently after they moved out for insurance purposes. The landlord's agent spent a good amount of time there and would have noticed a smoke smell, but did not.

There is no supporting documentation that the health of the tenants was impacted, or a Monetary Order Worksheet. The lower level tenants were actively harassed which negatively impacted their right to quiet enjoyment. The application should be dismissed without leave to reapply.

### Analysis

Firstly, with respect to half of the month's rent for December, 2021, I agree with the landlord's agent that the tenants have proof that the entire month's rent was paid, and that should suffice for the purchaser of the rental home. If an error was made, it's between the seller and the purchaser to correct, and I dismiss the tenants' claim for half a month's rent.

Where a party makes a monetary claim for damage or loss, including aggravated damages for loss of quiet enjoyment, the onus is on the claiming party to establish that the party suffered a loss, that the loss was suffered as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement, and what efforts the claiming party made to mitigate any damage or loss suffered.

A lot of testimony and evidence has been provided regarding social media posts. A landlord has no control, nor is the landlord obligated to or permitted to interfere with social media posts.

I have reviewed copious amounts of evidentiary material, and I rely largely on the oral testimony of the parties.

The tenants in this matter refused to deal with the landlord's agent even after learning that the previous property manager was no longer dealing with the tenancy.

I also consider the undisputed testimony of the landlord and the landlord's agent that:

- no smoke was ever smelled in the lower level rental unit;
- no complaints were received by the landlord for over 3 years about smoking;
- the tenants deliberately blocked the lower level tenants' ability to move out;
- the tenants continually harassed the landlord and the landlord's agent in an effort to have the lower level tenants evicted; and

- caused the tenants in the lower level to move out due to continued harassment.

I agree with the landlord's agent that if the tenants suffered any discomfort, it was temporary. I also agree that the tenants in the lower level unit had as many rights as the tenants in the upper level. The landlord named in the application also testified that if anyone would be evicted, it should have been the tenants in the upper level.

I am not satisfied that the tenants have mitigated any loss of quiet enjoyment, have not established that the landlord has failed to comply with the *Act* or the tenancy agreement, and have not established that any loss was suffered.

I dismiss the tenants' application for monetary compensation.

Since the rental unit has sold, the tenants have a new landlord, and therefore, I dismiss the tenants' application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Since the tenants have not been successful with the application, the tenants are not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the tenants' application is hereby 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: March 11, 2022

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Residential Tenancy Branch