



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, CNR, OLC, MNDCT, LRE

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 6, 2021 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent;
- an order that the Landlord comply with the Act;
- a monetary order for damage or compensation;
- an order restricting the Landlord's right to enter the rental unit; and
- an order granting recovery of the filing fee.

### Preliminary Matters

The parties had a dispute resolution hearing scheduled on March 24, 2022. The Landlord's Agent attended the hearing; however, no one appeared for the Tenant. In the decision dated March 24, 2022 the Arbitrator dismissed the Tenant's Application as no one attended for the Tenant. The Tenant applied for a review consideration on March 30, 2022 and was granted a new hearing.

The Tenant and the Landlord's Agent attended the hearing at the appointed date and time. The Tenant indicated that they had a witness, however, they were not called into the hearing by the Tenant.

The parties confirmed service and receipt of their respective Application, amendment, and documentary evidence packages. As there were no issues raised, I find the above noted documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties confirmed that the tenancy has since ended. Therefore, the Tenant's claim to cancel a 10 Day Notice, an order that the Landlord comply with the Act, and an order

restricting the Landlord entry to the rental unit are now moot, and therefore, dismissed without leave to reapply.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession, and an order requiring the payment of the unpaid rent, if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*. Having made the above finding, I will now turn my mind to whether the Landlord is entitled to an Order of Possession and a monetary order for unpaid rent, pursuant to section 55 of the *Act*.

As the tenancy has ended, I find that the Landlord does not require an order of possession. The Review Hearing continued based on the Tenant's claim for monetary compensation and for the return of the filing fee, and also to consider if the Landlord is entitled to any compensation relating to unpaid rent.

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. Is the Tenant entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
2. Is the Tenant entitled to recover the filing fee, pursuant to Section 72 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 55 and 67 of the *Act*?

#### Background and Evidence

The parties agreed to the following; the tenancy began on December 18, 2020. Rent in the amount of \$1,375.00 which includes utilities was due to the Landlord by the first day

of each month, as well as a security deposit in the amount of \$650.00 was paid to the Landlord. The tenancy ended on December 31, 2021.

With respect to the unpaid rent in the amount of \$650.00, the Tenant acknowledged that she withheld \$650.00 from the December 2021 rent. The Tenant acknowledged that she instructed the Landlord to retain the \$650.00 deposit in lieu of the rent. The Landlord confirmed during the hearing that they continue to hold the \$650.00 deposit.

The Tenant is claiming \$10,000 for loss of quiet enjoyment of the rental unit. The outset, the Tenant stated that her claim is not realistic and that she is seeking damages for constant harassment which should amount to \$3,500.00. The Tenant explained that during her tenancy, the neighbouring occupant had installed a surveillance camera that was pointed at the Tenant's rental unit. The Tenant stated that she was unable to open the blinds in her living room as a result.

The Tenant stated that there were several maintenance issues throughout the tenancy which the Landlord did not repair in a timely manner. The Tenant stated that there were electric problems with flickering lights, a door which needed repair, and a leaking dishwasher. The Tenant stated that it took six weeks for the Landlord to repair these items.

The Tenant also stated that the Landlord entered her rental unit two days in a row to conduct showings. The Tenant stated that the second showing should have been cancelled as no one attended as a result of poor weather conditions. The Tenant stated that the Landlord entered regardless, which is a form of harassment.

The Landlord's Agent stated that all maintenance issues were resolved and that proper notices of entry were provided to the Tenant prior to attending the rental unit to conduct showings. The Landlord's Agent stated that the Landlord attended the rental unit during the second showing just in case anyone decided to show up for the showing despite the poor weather conditions. The Landlord's Agent denied that there was any harassment.

### Analysis

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

Regarding the unpaid rent in the amount of \$650.00 which was listed on the 10 Day Notice, I accept that the parties agreed that the Landlord is entitled to retain the

Tenant's security deposit in lieu of the unpaid rent. As such, I order that the Landlord retain the Tenant's security deposit in the amount of \$650.00.

In relation to the monetary compensation sought by the Tenant, Section 67 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

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, the Tenant is claiming \$10,000.00 in relation to loss of quiet enjoyment due to the Landlord's harassment. In the Tenant's own testimony, they indicated that their claim unrealistic. The Tenant stated that they feel that \$3,500.00 in damages would be more appropriate.

I find that the Tenant provided insufficient evidence to demonstrate that the Landlord's actions or inactions constitute a substantial interference with the ordinary and lawful enjoyment of the premises. As such, I dismiss the Tenant's Application without leave to reapply. Seeing as the Tenant was not successful in their Application, the Tenant is not entitled to the return of the filing fee.

### Conclusion

I dismiss the Tenant's Application for compensation. The Tenant's Application is dismissed without leave to reapply. The Landlord is permitted to retain the Tenant's security deposit in the amount of \$650.00.

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 18, 2022

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Residential Tenancy Branch