



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **MNDCT, RR, PSF, LRE, LAT, OLC, FFT**

**MNDCT, AAT, PSF, LRE, LAT, RPP, OLC, FFT**

### **Introduction**

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with two applications filed by the tenants pursuant the Act:

- A monetary order for damages or compensation pursuant section 67
- An order for a reduction of rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 31;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

The second application was for:

- A monetary order for damages or compensation pursuant section 67;
- An order allowing the tenant access to the rental unit pursuant to section 30;
- An order that the landlord provide services or facilities required by the tenancy agreement pursuant to section 27;
- An order suspending the landlord's right to enter the rental unit pursuant to section 70;
- Authorization to change the locks to the rental unit pursuant to section 31;
- An order for the return of personal property pursuant to section 65;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and

- Authorization to recover the filing fee from the other party pursuant to section 72.

The tenants attended the hearing and the landlord attended the hearing, represented by his counsel, AD. Tenant KC2 (the “tenant”) spoke on behalf of both tenants. As both parties were present, service of documents was confirmed. The landlord acknowledged service of both the tenants’ applications and evidence; the tenants confirmed service of the landlord’s evidence. Neither party had issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure (“Rules”) and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

#### Preliminary Issue

At the commencement of the hearing, the tenants advised me that the second filing was made in response to the landlord’s attempt to start charging them for use of an uninhabitable cabin located on the residential property which they refused. The tenants acknowledge that the landlord has not pursued this additional charge and that they continue to pay rent as established under the original tenancy agreement. The tenant KC2 agreed that only the 7 issues identified in her first application for dispute resolution (file ....883) would be heard during this hearing.

#### Issue(s) to be Decided

Are the tenants entitled to the orders as sought in the application for dispute resolution?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party’s evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the rental unit is a single-family home located on a large property containing one or more cabins and a fenced-in area restricted to the tenants.

The tenant KC2 gave the following testimony. She and co-tenant, her father have been renting the unit since 2018. After the landlord renovated the lower unit of the home, the parties signed a fixed term tenancy which began on January 15, 2021, becoming month to month at the end of the fixed term, January 31, 2022. Rent was set at \$2,700.00 payable on the first day of each month for both upstairs and basement, as noted on the tenancy agreement. Under part 3 of the agreement, under "rent" there is additional information that reads, *"Tenant can use the property yard for their personal use and have to keep it clean except the area within the chain fence"*. Both parties agree that the utilities are paid for by the landlord. On both the tenant's and landlord's copy of the tenancy agreement, a notation is made that there are 6 pages of addendums, however neither party provided them for this hearing.

The tenant testified that in the last week of May, they were notified a 5<sup>th</sup> wheel RV trailer was moving into area inside the chain fence. The occupants from the trailer went onto the residential property and hooked a water hose and an electrical extension cord to the rental unit (the house) and began to use the water and electricity. The tenants argue that the house is old, has bad wiring and cannot support a second household using the electricity. Second, the water pressure is also very bad and the tenants couldn't even take showers when the occupants of the trailer were using the water. Third, the area on the other side of the fence is not connected to the sewer and the occupants of the trailer were dumping raw feces and urine into the estuary adjacent to the property. The tenants also allege that the occupants of the trailer have been stealing from the neighbours and using the cabins located on the property as storage.

The tenants testified that the landlord told them that they had to allow the occupants of the trailer to use the power and water since the landlord was paying for it. The tenants argue that they have the exclusive rights to the property. The property is not zoned to house recreational vehicles with occupants. The trailer is still there as of the date of this hearing and the trailer occupants continue to sneak in and out of the trailer in the middle of the night. The tenant seeks to have the trailer removed and to restrict the landlord from renting out parts of the property, since the tenants have exclusive possession of the property under the tenancy agreement.

In January 2021, after the landlord did renovation to the lower unit, the tenant KC2 moved into the lower unit of the rental home. Prior to that she lived alongside the other named tenant, KC1. The tenant testified that during the tenancy, the fridge broke, the

dryer broke and they discovered termites. A contractor came, removed the baseboards to look for termites and left. The termites were treated in February 2021 using chemicals that were harmful to pregnant women. The tenant testified that currently she does not see any live termites, however they are not usually noticeable during colder months, only in spring.

The tenants seek to change the locks to the storage room on the side of the house. When they moved in, they were given a key, however when KC2 moved into the lower unit, the landlord asked to borrow the key to the storage room and never returned it, saying he wants to keep it for his own use.

There is a cabin on the property used by KC1 for storage. The landlord has sought to charge the tenant an additional \$500.00 per month for using it, but the tenant refuses to pay anything else, other than what is stated on the tenancy agreement. The landlord has threatened to remove the tenant's belongings but that has not happened. The tenant also wants to restrict the landlord's access to the rental unit as they come onto the property whenever they want. The landlord goes into the garage unannounced and takes photos of the property when they are not home.

The landlord's counsel gave the following submissions. The area where the house is located is well known to be a tourist area used frequently by visitors and residents. The visitors bring in recreation vehicles and find homeowners willing to rent space to them for a fee. According to counsel, it's common to hook travel trailers to residences during the summer season in this vacation town. Counsel notes that the tenants once had a visitor in a recreational vehicle stay with them, and that the tenant let people store their boat trailers on the property for a fee that is not shared with the landlord. The tenant did not seek permission from the landlord or the city to do so.

Counsel asked that I view images of the property on Google to understand the layout of the property and I advised counsel that that evidence had to be presented to me by the landlord in accordance with the Rules of Procedure. Counsel went on to describe the property as a house, an area beside the house and an area inside a chain link fence. Counsel submits that because the residence is located in an area popular with tourists, the area inside the chain link fence was excluded from the tenancy agreement.

The tenancy began with a previous landlord. In April 2020, the landlord did substantial renovations to the basement and the tenant's daughter took it. Rent for the entire house was set at \$2,700.00 per month, split at \$1,200.00 up and \$1,500.00 down. The landlord pays all utilities.

In February 2021, the tenant told the landlord about the termites in the basement that the landlord found odd because the house was just renovated down to the studs. The landlord inspected and didn't find any termites, but did find ants. Since the tenant KC2 was pregnant, it was suggested salt water be used to eradicate the ants which the tenants agreed to. Nothing more was heard until the following year and the landlord told the tenants to find a quote to get rid of the termites which they did. The landlord accepted the quote from the pest-control company chosen by the tenants and did the treatment that was not the cheapest option.

There is no rent increase. Rent has remained the same at \$2,700.00 since the tenancy agreement was signed although the tenant KC1 and the landlord have engaged in negotiating another agreement. The tenant KC1 has also been using the property to store a multitude of garbage bags full of recyclable bottles and cans. The landlord does not argue the tenant can derive an income this way, however he finds it unreasonable the tenants don't understand his costs have also gone up and he is not breaking even on the rental. The city complained about the mess and told the landlord that the bags of cans had to go. They could attract animals to the property. The landlord has had to pay to keep the property clean.

Lastly, the landlord BB gave submissions asking why it would be unreasonable that he too could have a trailer on the property and make \$500.00 when the tenant can make money off his property. He has never raised the tenants' rent.

In rebuttal, the tenants acknowledge that KC2's mother in law came to visit in a motor home for a week, however she couldn't attach the motor home to the house either. There is no water pressure to support it. KC1 paid the landlord \$1,200.00 for the boat storage. The bottles were cleaned up and KC1 did make money from them. The landlord never informed the tenants that it was a problem for them.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

#### **Liability for not complying with this Act or a tenancy agreement**

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

**Director's orders: breach of Act, regulations or tenancy agreement**

**65** (1) Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make any of the following orders:

(f) that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement;

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following 4-point test:

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

The tenants seek a monetary order of \$2,000.00 for what they describe in the application as, "*Hidden rent increases. Not having exclusive use of my property. Landlord moved unsavoury people into a section of the property on a trailer even though we have exclusive use of the property.*"

During this hearing, I confirmed on multiple occasions with both the tenants and the landlord about whether the landlord has raised the rent above the \$2,700.00 as shown on the tenancy agreement. Both agreed he has not, although the landlord testified that he and the tenant KC1 had engaged in discussions about a new tenancy agreement. I do not find any rent increase, hidden or otherwise.

Further, while I heard compelling testimony regarding the presence of the "*unsavoury people*" on the residential property, and not having exclusive use of the property, I was not provided with any means to determine the extent to which the tenants should be compensated for this. The tenants did not state \$2,000.00 is calculated as a percentage of the loss from not having the exclusive use of the property or provide me with any means of calculating how they arrived at this figure. I find the tenants have not provided sufficient evidence to verify the amount required to compensate them for the claimed loss (point 3 of the 4-point test) and I dismiss this portion of the claim.

The second issue identified in the tenants' application is for a reduction in rent in the amount of \$2,000.00 for having to live with termites for a year. The tenant's testimony on this point was scant. In the tenant's evidence, the first mention of termites via text message is April 8, 2021. In this text, the tenant also reminds the landlord that she is expecting her baby and it will be difficult to reattach baseboards when the baby arrives.

In testimony, the tenant testified that she was apprehensive of the chemicals to be used by the exterminator as she was pregnant. I accept the landlord's submission that the parties agreed that salt water would be sufficient until after the baby was born and that the issue would be readdressed later. A subsequent (undated) quote to do the job was provided by the tenant and the landlord hired the tenant's exterminator to eliminate the termites on March 8, 2022. In testimony, the tenant testified that as of the hearing of this application, she has not seen any live termites. Given the circumstances I find the landlord took the steps to make the rental unit suitable for occupation that complies with the health, safety and housing standards required by law within a reasonable time. This portion of the tenants' claim is dismissed.

Regarding the tenant's application to suspend or set conditions on the landlord's right to enter the rental unit, the tenants did not provide any relevant testimony or provide sufficient documentary evidence related to the landlord entering into the rental unit without first providing 24 hours notice. I have insufficient evidence to justify such an order and I dismiss this portion of the tenant's application.

Regarding the application to change the locks: I am satisfied that the landlord's agent asked the tenant to borrow the key to the side storage room attached to the rental unit on January 12, 2021 and did not return it to the tenant. As this room is attached to the rental unit exclusively occupied by the tenants, I find it more likely than not that the landlord would be required to trespass on the tenants' property to access it.

Subsequently, I order that the landlord is to return the key to the side storage room to the tenants forthwith. I do not grant the authorization to change the lock to the rental unit or the side storage room.

Regarding the tenant's application seeking that the landlord comply with the Act:

In her application, the tenant seeks the following:

*I want exclusive use of my property which I am entitled to and this trailer that's living on my property using my power and water which is severely messing up my life and endangering my daughter gone. They are taking our belongings and interfering with our property. They have only been here 24 hours. Not zoned for living. I am entitled to quiet enjoyment which has also been interfered with.*

Pursuant to section 28,

**Protection of tenant's right to quiet enjoyment**

**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.

Section 1 of the Act defines a residential property as follows:

**"residential property"** means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;

In the landlord's evidence is a text message from the tenant KC1 sent on May 30, 2022 that reads,

*"We rent the house. You can rent the fenced in area all you want but that doesn't mean they can hook up to the house for power or water. We will be talking to the city tomorrow on what you are trying to do."*

Both parties were consistent in saying the rental unit was a single home located on the residential property with a "cabin" not suitable for occupation and a fenced in area for the landlord's use. Landlord's counsel submits that since the property is located in a tourist area popular with RV'ers, and implied that allowing them to use the property within the fenced in area for RV's should be allowed. On this point, I do not agree.

There is no evidence before me that the property is zoned for RV's and I find it more likely than not that the city's bylaws prohibit occupants in an RV parked within city limits without an adequate sewer hookup, water or electricity, as asserted by the tenants.

The tenants testified that the occupants of the RV are not currently living in the RV but sometimes come back to the unit to sleep in at night. I find that allowing the RV to remain parked within the fenced in area constitutes a breach of the landlord's responsibility to protect the tenants' right to quiet enjoyment of the residential property.



Consequently, I order that the landlord have the RV removed from the residential property by **4:00 p.m. on Friday, December 16, 2022.**

The tenants filed an application to suspend the landlord's right to enter the rental unit seeking an order that the landlord's ability to rent little sections of the property be blocked. Based on the testimony of the parties and evidence before me, I am satisfied the tenants rented the entire residential property with the exception of the fenced in area. I order that the landlord is entitled to continue to use the fenced in area for his own use so long as it does not breach the tenant's right to quiet enjoyment under section 28. The remainder of the residential property is for the exclusive use of the tenants.

The decision to award a filing fee is discretionary upon the arbitrator and in accordance with section 72 of the Act, the filing fee will not be recovered.

#### Conclusion

I order that the landlord is to return the key to the side storage room to the tenants forthwith. I do not grant the authorization to change the lock to the rental unit or the side storage room.

I order that the landlord have the RV removed from the residential property by **4:00 p.m. on Friday, December 16, 2022.** The landlord is entitled to continue to use the fenced in area for his own use so long as it does not breach the tenant's right to quiet enjoyment under section 28.

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 25, 2022

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Residential Tenancy Branch