



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL-4M, MNRT, MNDCT, AAT, PSF, LRE, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding a tenancy.

The tenant applied on October 12, 2022 for:

- dispute of a One Month Notice to End Tenancy for Cause, dated October 5, 2022 (the One Month Notice);
- dispute of a Four Month Notice to End Tenancy for Demolition, or Conversion to Another Use, dated July 21, 2022 (the Four Month Notice);
- compensation for the cost of emergency repairs made during the tenancy;
- compensation for monetary loss or other money owed;
- an order for the landlord to allow access to the unit for the tenant and/or his guests;
- an order for the landlord to provide services or facilities required by the tenancy agreement or law;
- an order to suspend or set conditions on the landlord's right to enter the rental unit;
- an order for the landlord to comply with the Act, Regulation, and/or tenancy agreement; and
- the filing fee.

The hearing was attended by the tenant and the landlord, who were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Preliminary Matters

The tenant testified that he and his spouse vacated the rental unit at the end of January 2023. Therefore, I dismiss the tenant's claims to dispute the One Month Notice and the Four Month Notice, as they are moot. The landlord testified he is still seeking an order of possession because the tenant had not told the landlord he had vacated the unit, and because the tenant has not returned the keys. As the tenant has vacated the rental unit, the landlord is granted an immediate order of possession.

I dismiss the tenant's following claims as they are related to a current tenancy: an order for the landlord to allow access to the unit for the tenant and/or his guests; an order for the landlord to provide services or facilities required by the tenancy agreement or law; an order to suspend or set conditions on the landlord's right to enter the rental unit; and an order for the landlord to comply with the Act, Regulation, and/or tenancy agreement.

I dismiss the tenant's claim for compensation for the cost of emergency repairs made during the tenancy, as the tenant testified this claim was made in error.

### Issues to be Decided

- 1) Is the tenant entitled to compensation for monetary loss or other money owed?
- 2) Is the tenant entitled to the filing fee?

### Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began around February 2019 or 2020 with a previous landlord, and the property was sold to the current landlord in January of 2022; rent was \$2,000.00, due on the first of the month; and the tenant paid a security deposit of \$1,000.00, which the landlord still holds.

The landlord testified that the unit was purchased as part of a multi-unit housing development project.

The tenant is seeking compensation in the amount of \$25,000.00; the tenant's claim details, reproduced as in the original, state: "Excavator and semi trucks in our back yard

Bullying myself and my wife to move out early Threatening eviction because I did not want excavators in the backyard Saying I only rent the front yard and house Forcing us to find a safe home on short notice after excavation started I would like rent paid back for the full year 2022 Expenses covered for moving Expenses covered for stress incurred Destroying our garden, planter boxes Limiting our access to the back yard.”

The tenant testified that he did not submit a breakdown of how he arrived at the amount of \$25,000.00 sought for the above issues, and no Monetary Order Worksheet is submitted in support.

The tenant testified he was seeking to recover a year's worth of rent. The tenant testified that they had received no notice that an excavator would be working in the back yard, and that his spouse was frightened when she woke up to find the large machine in the back yard. The tenant testified that due to the disruption from the construction, he and his spouse had to find a new place to live. The tenant testified that though the landlord had demanded he stop using the unit for short term rentals, which negatively impacted the tenant's finances, the tenant was not seeking to recover money in relation to that issue. The tenant testified he and his roommates had enjoyed using the back yard, and could not do so after July 2022. The tenant testified they could not use all of what they had rented.

The tenant submitted the following documentary evidence:

- two undated photos of an excavator or other large machine and a large truck, behind a fence, at a distance. An expanse of lawn is in the foreground.
- a photo of a railing or roof, and an area of lawn
- a tenancy agreement and amendment, signed by the current landlord but not the tenant, which includes the following:

The Landlord may be using part of the rear property to install service connections for development of the neighbouring properties. This work may require the removal of some trees and accessory buildings. The Landlord shall close off this section of the property with fencing prior to any further work being done on the property for these services. The Landlord shall give the Tenant 72 hours notice prior to any work being done.

- a letter from the landlord, telling the tenant they must stop offering short-term rentals as it is not permitted by the municipality
- the One Month Notice
- the Four Month Notice
- registered mail documentation

The landlord testified they had consistently communicated with the tenant about what to expect with regard to upcoming construction. The landlord's written submission states that they purchased the subject property in December 2021, and the contract was to be for vacant possession, but at closing the seller informed the purchasing landlord that there was a tenant in the subject unit. In January 2022 the tenant was advised of the multi-unit housing development project, and that the landlord would be running drainage pipe through the rear yard by summer 2022. The submission states the landlord kept the tenant apprised of the development progress, and that in late June a protective orange fence was put up. The landlord submits they had advised the tenant in prior weeks that the fence would be going up and work starting soon in the area.

The landlord's submission states that in early July 2022, work began in the rear 15 percent of the subject property, but as the landlord was travelling, he overlooked notifying the tenant that machinery would be working on the property. The submission states that when the tenant contacted the landlord, the landlord apologized for not notifying the tenant.

The submission states that the landlord and tenant met on July 14, during which the tenant said the work was upsetting his short-term rental clients, and the landlord offered to raise the height of the protective fence and install eight-foot black screening, which the tenant agreed to. The submission states that installation of the agreed modifications to the fence began the following day.

The landlord testified that the tenant had originally sought \$42,000.00 from the landlord because of lost of revenue from short-term accommodation rentals, due to disruption from the construction. The landlord testified that after they learned that short-term rentals are not permitted in the municipality, they told the tenant they must stop the practise.

### Analysis

The tenant is seeking compensation from the landlord in the amount of \$25,000.00.

Section 7 and 67 of the Act and [Policy Guideline 16](#) provide that if damage or loss results from a party not complying with the Act, the Regulation, or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award.

Policy Guideline 16 states:

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 order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

An analysis of whether an applicant is entitled to compensation under the Act requires as a starting point a clear statement of what amount is being sought, and on what grounds. Without it, a respondent is not able to understand the case against them and prepare accordingly, as is their right under fairness principles. Also, an arbitrator is unable to determine whether an applicant is entitled to compensation, and if so, in what amount. Section 59(2) of the Act states that an application for dispute resolution must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings.

The tenant's application indicates he is seeking to recover 12 months' rent, which comes to \$24,000.00. The application does not articulate the reasoning behind the remaining \$1,000.00 sought. Therefore, the decision contemplates only whether the tenant is entitled to compensation in the amount of \$24,000.00.

Considering the four-part test mentioned above, in order to determine whether the tenant is entitled to compensation, I must first determine whether the landlord breached the Act, Regulation, or tenancy agreement.

I found the tenant's application indicated he was seeking compensation based on a loss of quiet enjoyment of the property, based on the presence of an excavator and large trucks in the back yard, associated stress, and limited access to the area. The tenant testified that they had been provided with no notice that an excavator would be working in the back yard, which frightened his spouse, and that the disruption from the

construction required them to move. The tenant testified that he and the other occupants were not able to use the back yard after July 2022.

The landlord submitted that he contacted the tenant in January 2022 to inform him that a major development would be going up around the unit. The landlord's written submission documents several subsequent dates on which the landlord provided an update to the tenant on progress of the development. The landlord acknowledged that in July 2022 he failed to notify the tenant that large machinery would begin operating in the tenant's back yard, and apologized for the omission. The landlord submitted that work began in the rear 15 percent of the subject property in early July 2022.

As the parties agree that there was construction taking place adjacent to and on a portion of the subject property, there is no question this would have been disruptive to the tenant. Section 28 of the Act states that a tenant is entitled to quiet enjoyment, and subsection 28(b) specifically states that the rights of the tenant include "freedom from unreasonable disturbance."

Based on the evidence from both parties that the disturbance was the result of a large housing project, and the landlord's detailed submissions on the multiple dates on which the tenant was informed about the project and its progress, I find the disturbance to the tenant caused by the work was not unreasonable. I also find that the tenant provided limited testimony and relevant evidence in support of his claim.

I accept the landlord's evidence that the tenant was provided with notification of the upcoming work. I also find that exposure to the inherent disruption of construction is a fact of life. Therefore, I find the tenant has failed to prove he is entitled to compensation.

As the tenant is unsuccessful in his application, I decline to award him the filing fee.

### Conclusion

The landlord is granted an immediate order of possession.

The tenant's application is dismissed.

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 13, 2023

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Residential Tenancy Branch