

## **DECISION**

Dispute Code            MNDCT, OLC, FFT

### Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution made on November 23, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order granting compensation for monetary loss or other money owed;
- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant and the Landlords attended the hearing and provided affirmed testimony.

The Tenant testified the Landlord was served with the Notice of Dispute Resolution Proceeding package by registered mail on December 2, 2022. The Landlords acknowledged receipt. In addition, the Tenant testified that a second package of evidence was served on the Landlords by leaving a copy in the Landlords' 'mail slot on February 26, 2022. The Landlords confirmed they did not receive it until they returned from vacation on March 12, 2023. However, JC confirmed the Landlords wished to proceed with the hearing.

On behalf of the Landlords, LC testified that the documentary evidence in response to the application was served on the Tenant by registered mail on January 23, 2023. The Tenant acknowledged receipt.

No further issues were raised with respect to service or receipt of the parties' evidence packages during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full 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, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to an order that the Landlords comply with the Act, Regulations, and/or the tenancy agreement?
3. Is the Tenant entitled to recovery the filing fee?

### Background and Evidence

The parties did not dispute that they were in a landlord/tenant relationship from the date the Landlords purchased the rental property in 2015 until the date they sold the rental property in 2022.

The Tenant's claim is for compensation due to a loss of quiet enjoyment of the rental unit during the tenancy.

The Tenant testified that he felt the relationship began to fall apart in 2019 when he hung a Pride flag in the window. The Tenant testified that the Landlords' attitude towards him changed. In addition, the Tenant testified that the Landlords showed a lack of compassion in August 2020 when a parent died and he became responsible for his younger siblings, and when he lost his employment. The Tenant suggested the Landlords failed to accommodate these changes.

In reply, the JC testified that he feels bad that Tenant feels as he does. He acknowledged that the Tenant has gone through a difficult time and described the Tenant's testimony as "hard to listen to." However, JC testified that he has a different version of events.

LC denied the Tenant was treated differently. She noted that the Landlords rented the unit to the Tenant until they sold the property in June 2022. LC also stated that the Tenant had previously stated the relationship was amicable until August 2021.

Further, the Tenant testified the Landlords issued a Two Month Notice to End Tenancy for Landlord's Use of Property on August 27, 2021. Although the Two Month Notice was ultimately set aside following a dispute resolution hearing on February 22, 2022, the Tenant testified that this caused "constant anxiety...fear of what would come next." The Tenant asserted that the Two Month Notice was not issued in good faith and continues to believe the Landlords intended to remove the Tenant and exploit the property for their own purposes and financial gain. The file number is included above for ease of reference.

In reply, JC testified that the Landlords intended to occupy the rental unit.

The Tenant also claims that after the Two Month Notice was issued, the Landlords harassed the Tenant by repeatedly requesting payment of utility bills in excess of the amount indicated in the tenancy agreement. A number of emails between the parties were submitted into evidence.

In reply, JC denied that the Landlords harassed the Tenant regarding the payment of utilities. Rather, JC asserted that the Tenant paid a reconciliation amount annually for the first 3-4 years of the tenancy. JC testified that the Tenant subsequently decided that he didn't have to pay utilities until the lease was over. JC testified that the amount was small at first but grew to more than \$1,700.00. JC acknowledged that the Tenant was sent reminders as the amount outstanding grew. The payment of utilities was addressed in a decision dated December 14, 2022. The file numbers are included above for ease of reference.

LC referred to a previous decision issued on March 2, 2022, in which the arbitrator concluded there was "no dishonest motive" when the Landlords issued the Two Month Notice. The file number is included above for ease of reference.

The Tenant testified that the Landlords were frequently at the property and would never tell the Tenant when they were coming, despite his requests that they do so. The Tenant testified that this was not a problem before the pandemic but became a problem due to his perception of the "antagonistic" attitude of the Landlords. The Tenant also suggested the Landlords began to neglect the rental property.

In reply, JC denied the Landlords did not neglect the property and asserted that the Landlords responded to every one of the Tenant's requests. JC also acknowledged he would attend the rental property more frequently in the Spring to mow the lawn. JC testified the Landlords have no record of repeated requests that they give the Tenant notice of their intention to attend the rental property.

Further, LC testified that the garage at the rental property is used by the Landlords for wood storage and as a painting shop.

Finally, the Tenant seeks recover of the filing fee paid to make the application.

### Analysis

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

Section 67 of the Act empowers the director 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.

Section 28 of the Act confirms a tenant is entitled to quiet enjoyment of a rental unit, including rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the Act, and use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 provides assistance when determining whether there has been a breach of a tenant's right to quiet enjoyment:

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. 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 entitlement to 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.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

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A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

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.

In this case, I find there is insufficient evidence before me to conclude that the Landlords' actions resulted in a substantial interference with the ordinary and lawful use of the rental unit. Specifically, I find there is insufficient evidence that the Landlords' behavior towards the Tenant changed when he hung a Pride flag in a window or due to his family circumstances.

In addition, I find that the Two Month Notice was merely the first step in a lawful process to end the tenancy. The Tenant disputed the Two Month Notice and was successful at a dispute resolution hearing. I was not referred to any evidence to suggest the Landlord issued further notices to end tenancy. I also note the decision issued on March 2, 2022 states there was “no dishonest motive” behind the Two Month Notice.

I find there is insufficient evidence before me to conclude the Landlords’ email communication about outstanding utilities constituted harassment. The parties acknowledged that the Tenant had paid outstanding utilities periodically during the tenancy. However, the Tenant testified during the hearing that he changed this practice in response to the Landlords taking steps to enforce their rights under the Act. In addition, I note the email messages submitted were courteous and appear to have been a mere reminder of the growing balance. Again, the payment of utilities was addressed in a decision dated December 14, 2022.

I find there is insufficient evidence before me to conclude that the Landlords’ presence at the rental property was excessive and amounted to a breach of the Tenant’s right to quiet enjoyment. I accept that the Landlords performed routine maintenance of the rental property (as they are obligated to do) and used the garage for their own purposes during the tenancy. I was also not referred to any documentary evidence to support the Tenant’s testimony that he made repeated requests for the Landlords to provide him with notice when they would be at the rental property.

Considering the above, I find there is insufficient evidence before me to find that the Landlords’ actions resulted in a breach of the Tenant’s right to quiet enjoyment of the rental unit. Accordingly, I order that the Tenant’s application is dismissed without leave to reapply.

### Conclusion

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: March 17, 2023

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Residential Tenancy Branch