



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, RR, RP, LRE, OLC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On January 23, 2023, the applicants filed for:

- compensation for monetary loss or other money owed;
- an order to reduce rent for repairs, services, or facilities agreed upon but not provided;
- an order for repairs made to the unit or property, having contacted the landlord in writing;
- 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, or the tenancy agreement; and
- recovery of the filing fee.

Those present 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 Residential Tenancy Branch Rules of Procedure 2.3 states:

**2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As one of the applicants' claims was a monetary claim, and the balance were related more directly to the tenancy itself, I dismiss with leave to reapply the applicants' claim for compensation for monetary loss or other money owed, and will consider their multiple remaining claims.

During the hearing, the respondent confirmed he was a tenant, subleasing the unit to the two named applicants, which was not disputed by the applicants. For the remainder of the decision I will be referring to the respondent as the "landlord" and the applicants as the "tenants," having considered Policy Guideline 19. *Assignment and Sublet*, which states that in a sublet the original tenant remains the tenant of the original landlord, and, upon moving out of the rental unit granting exclusive occupancy to the sub-tenant, becomes the "landlord" of the sub-tenant.

### Issues to be Decided

- 1) Are the tenants entitled to an order to reduce rent for repairs, services, or facilities agreed upon but not provided, in the amount of \$100.00 a month?
- 2) Are the tenants entitled to an order for repairs made to the unit?
- 3) Are the tenants entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?
- 4) Are the tenants entitled to an order for the landlord to comply with the Act?
- 5) Are the tenants entitled to recovery of the filing fee?

### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began October 1, 2020, rent is \$950.00, and the tenants paid a security deposit for \$450.00, which the landlord still holds.

A copy of the sublease agreement is submitted as evidence, and states that the rental unit is a room in a "shared accommodation house."

### *Rent reduction*

The tenants testified they are seeking a rent reduction of \$100.00 a month because the landlord is not permitting them to store items in the basement or garage, despite a previous verbal agreement and having previously permitted the tenants to do so for about 25 months.

The landlord submitted that part 15 of the tenancy agreement states that tenants may not store personal items in common areas. That section begins as follows:

15. **VERY IMPORTANT NOTES & CONSENT:** The Tenant hereby gives consent that the room/place/property/premises addressed above is rented will be only used for their own residence purposes and no any business(s) will be conducted from this place at all. The Tenant will not put any personal stuff in common areas other than the allotted cabins and shelves. The Tenants gives consent to The Landlord and or to his Agents to dump any stuff found in common areas without notice and The Tenant will have no right to claim any losses. The Tenant hereby

### *Repairs*

The tenants testified they are seeking repairs made because there are mice and insects on the first floor of the house, the back yard in not being maintained, a homeless person was able to enter the house because the lock to the house has not been repaired, and a portion of the ceiling in a common area was cut open by a plumber and has not been repaired. The tenants did not provide testimony on issues regarding their rental unit, only on shared portions of the house.

The landlord testified that the tenants have accused him of not maintaining the property, and directed me to proof in evidence that he has been maintaining the house and yard. The landlord testified that the tenants living in the home are supposed to keep it clean but have not, so the landlord did his best to do so. The landlord testified he has arranged for a couple to help him clean and maintain the house. The landlord provided testimony on extensive damage done to the property by tenants living in the house. The landlord did not refer to damage to the subject tenants' rental unit.

*Suspend or set conditions on landlord's right to enter rental unit*

The tenants testified they are seeking to suspend or set conditions on the landlord's right to enter the rental unit because the landlord sometimes enters the house at night. The tenants testified that it is the house the landlord is entering, not the tenant's rental unit.

The landlord testified he has never entered the tenants' rental unit without permission.

*Order for landlord to comply*

Regarding the tenants' claim for the landlord to comply with the Act, Regulation, or tenancy agreement, the tenants testified the landlord is contravening their right to quiet enjoyment of the unit, as protected by section 28 of the Act. The tenants testified the landlord is disturbing them and causing them stress.

The tenants submitted their sleep is disturbed because the landlord sends them text messages late at night. Submitted as evidence is a text from the landlord, sent at 1:07 AM, in which the landlord tells the tenants when pest control will come, and that as the pest situation is the tenants' fault, they will have to pay for the treatment. Another text contains photos of the kitchen sink, sent at 11:42 PM. In the text the landlord wrote: "First Level idiot," "Was it necessary to put scrap here," "Talk to me if u have courage," and "I will shut ur mouth up."

The tenants submitted that the landlord purposefully disturbed them by texting to ask them to send photos proving they had cleaned the laundry room. The text is submitted as evidence. The tenants submitted that the landlord singled them out from other tenants for this treatment.

The tenants submitted that the landlord's lawyer sent them a letter, falsely threatening that they must move out before January 31, 2023 as they are breaching the rental terms and house rules, including leaving kitchen burners on, smoking inside and outside their rental unit, playing loud music, and leaving common areas unclean, among other accusations. Submitted as evidence is a text from the landlord, which states: "U wana live or leave." Submitted as evidence is a test the tenants said was from the landlord, stating: "I can only pray that God must do a plane crash on this house."

The landlord did not respond to the tenants' claim that he has breached their right to quiet enjoyment.

## Analysis

While I have considered the presented 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.

### *Rent reduction*

The tenants are seeking a rent reduction of \$100.00 a month because the landlord is not permitting them to store items in the basement or garage, despite a previous verbal agreement and having previously permitted the tenants to do so. The tenants provided no proof to support their claim of a verbal agreement with the landlord, such as witness testimony or personal notes documenting the agreement.

The landlord submitted that that tenants may not store personal items in common areas, as supported by part 15 of the tenancy agreement, which is in evidence.

Rule of Procedure 6.6 states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

As the tenants have not provided evidence in support of their claim that they were previously permitted to store personal objects in common areas of the house, and the landlord has provided that the tenancy agreement specifically forbids it, I find on a balance of probabilities the tenants have failed to prove their claim and are not entitled to a rent reduction.

### *Repairs*

Section 32 of the Act states that a landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

The tenants testified they are seeking repairs made to shared areas of the house, but did not provide testimony on any repair issues regarding their rental unit. Therefore, I decline to make an order for repairs.

*Suspend or set conditions on landlord's right to enter rental unit*

The tenants are seeking to suspend or set conditions on the landlord's right to enter the rental unit because the landlord sometimes enters the house at night. The tenants testified it is the house the landlord is entering, not the tenant's rental unit, and the landlord testified he has never entered the tenants' rental unit without permission. Therefore, I decline to make an order to suspend or set conditions on the landlord's right to enter the rental unit. A landlord's right to enter a rental unit is restricted by section 29 of the Act.

*Order for the landlord to comply*

Section 28 of the Act states that a tenant is entitled to quiet enjoyment of the rental unit.

The tenants described multiple ways the landlord has disturbed their quiet enjoyment, and submitted documentary evidence in support. The tenants testified the landlord is disturbing them and causing them stress. The tenants testified that the landlord's behaviours have included repeatedly sending late night texts, berating the tenants; name calling; requiring the tenants to send photos of their cleaning; and threatening to evict the tenants in a manner contravening the Act.

The landlord did not respond to the tenant's testimony on this claim.

Based on the tenants' affirmed undisputed testimony, I find the tenants' right to quiet enjoyment, provided by section 28 of the Act, was breached by the landlord.

[Policy Guideline 6. Entitlement to Quiet Enjoyment](#) states: "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."

I order the landlord to ensure the tenants' entitlement to quiet enjoyment. This includes limiting non-emergency communication to a reasonable frequency and time of day, and communicating with the tenants in a respectful and professional manner, as the landlord/tenant relationship is a business relationship.

Should the landlord fail to ensure the tenants' entitlement to quiet enjoyment, the tenants are at liberty to pursue a monetary claim.

*Filing fee*

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in a portion of their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

The tenants may withhold \$100.00 from one month's future rent.

Conclusion

The landlord is ordered to ensure the tenants' entitlement to quiet enjoyment, in accordance with section 28 of the Act.

The tenants may withhold \$100.00 from one month's future rent.

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: April 26, 2023

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Residential Tenancy Branch