



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, OLC, FFT

### Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”)

- a monetary order pursuant to s. 67 for compensation or other money owed;
- an order pursuant to s. 62 that the landlord comply with the Act, Regulations, and/or the tenancy agreement;
- return of the filing fee pursuant to s. 72.

G.H. appeared as the Tenant. S.M. appeared as the Landlord’s agent.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Tenant advised having served his Notice of Dispute Resolution, evidence, and amendment on the Landlord. The Landlord acknowledges receipt of the Notice of Dispute Resolution but denies receiving the amendment and the evidence. Dealing first with the Notice of Dispute Resolution, I find that it was served in accordance with s. 71(2) of the *Act*.

Upon further inquiry, the Tenant says that he provided his amendment and evidence to Service BC and that he was not told to serve these documents on the Landlord. Rule 3.14 (Additional Evidence from an Applicant) and 4.6 (Serving an Amendment) require applicants to serve each of the named respondents at least 14 days prior to the hearing. It is no excuse for the Tenant to say he was not told to serve documents. He must apprise himself of his obligations under the Rules of Procedure.

In this instance, I find that the Tenant failed to serve either his evidence or the amendment he filed. It would be procedurally unfair to the Landlord to permit the

amendment as it was not served and similarly unfair to consider the Tenant's evidence as it was not served. Accordingly, I do not permit the amendment and will not admit or consider the Tenant's evidence.

The Landlord's agent advises that the Tenant was served with the Landlord's response evidence, which the Tenant acknowledges receiving without objection. Accordingly, I find that the Landlord's evidence was served in accordance with s. 71(2) of the *Act*.

### Issues to be Decided

- 1) Is the Tenant entitled to monetary compensation?
- 2) Should the Landlord be ordered to comply with the *Act*, Regulation, or the tenancy agreement?
- 3) Is the Tenant entitled to his filing fee?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

The parties confirm the following details with respect to the tenancy:

- The Tenant moved into the rental unit approximately 6 years ago.
- Rent of \$710.50 is due on the first day of each month.

The Landlord provides me a copy of the tenancy agreement.

### *Tenant's Monetary Claim*

Under s. 67 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.

3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

The Tenant claims that he has been subject to continuing harassment from another occupant at the building, describing general incidents in which the other occupant swore at him, gave him the finger, peered into his window, and threatened getting him evicted. According to the Tenant, this conduct from the other occupant has been ongoing since he moved into the rental unit. The Tenant says he has reported this to the Landlord some time ago and that the Landlord has failed to take action to address the harassment. The Landlord's agent acknowledges that the Tenant and the other occupant have not been on good terms but that the Landlord has spoken to both.

Section 28 of the *Act* protects a tenant's right to the quiet enjoyment, including the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit, and use of common areas without significant interference. There may be circumstances in which a tenant may seek recourse from a landlord who fails to ensure their rights under s. 28 of the *Act* are not being adequately protected. However, I have insufficient evidence to support that that has occurred here.

Firstly, the Tenant has provided oral evidence that is generally vague and lacking in specific details. To support a finding that the Landlord has failed to adequately protect the Tenant's right to quiet enjoyment, there must be clear and specific evidence of this. That has not been provided to me by the Tenant.

There was specific mention of dozens of incidents in which this other occupant peered into the Tenant's window in the past several months. However, the Landlord's evidence also includes a complaint against the Tenant from a D.T., which describes how one of the stairwells for the building is immediately adjacent to the Tenant's rental unit. I mention this because it appears just as likely that the other occupant, when passing by, momentarily glanced at the Tenant's window.

I have little doubt that the Tenant does not get along with this other occupant. However, his personal dispute is only relevant if the Landlord fails to take any action to address the issue should it constitute a breach of the Tenant's right under s. 28. In this instance, I accept that the Landlord has spoken with both individuals and is exercising due

diligence. The Landlord is not expected to police all conduct between occupants at a building nor is it the Landlord's responsibility to ensure all occupants get along.

I find that the Tenant has failed to establish a breach of the *Act* such that he is not entitled to monetary compensation. His claim under s. 67 of the *Act* is dismissed without leave to reapply.

*Tenant's Claim for an Order that the Landlord Comply*

Pursuant to a s. 62(3) of the *Act*, the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*, the Regulations, and the tenancy agreement. By implication, if an order is to be made under s. 62(3), the applicant tenant must demonstrate that the landlord breached the *Act*, Regulation, or the tenancy agreement. As explained above, I find that the Tenant has failed to do so.

I dismiss the Tenant's claim under s. 62 of the *Act* without leave to reapply.

Conclusion

I dismiss the Tenant's claim under s. 67 of the *Act* for monetary compensation without leave to reapply.

I dismiss the Tenant's claim under s. 62 of the *Act* for an order that the Landlord comply without leave to reapply.

As the Tenant was unsuccessful, I find he is not entitled to his filing fee. I dismiss the Tenant's claim under s. 72 of the *Act* 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: May 24, 2023

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Residential Tenancy Branch