



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, LRE, OLC

### Introduction

This hearing dealt with the Tenant's application under the *Residential Tenancy Act* (the "Act") for:

- compensation of \$2,100.00 for monetary loss or money owed by the Landlord pursuant to section 67;
- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to section 70(1); and
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62.

The Landlord, the Landlord's property manager DP, and the Tenant attended this hearing. They were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

All attendees were informed that the Residential Tenancy Branch Rules of Procedure prohibit unauthorized recordings of dispute resolution hearings.

The parties acknowledged receipt of each other's documents for dispute resolution. I find the Landlord was served with the notice of dispute resolution proceeding package and the Tenant's documentary evidence. I find the Tenant was served with the Landlord's documentary evidence.

### Issues to be Decided

1. Is the Tenant entitled to compensation of \$2,100.00 for monetary loss or other money owed?

2. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?
3. Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

The rental unit is the upper suite of a house. This tenancy commenced on January 15, 2023 and is month-to-month. Rent is \$2,100.00 due on the first day of the month. The Tenant paid a security deposit of \$1,050.00 and a pet damage deposit of \$400.00. A copy of the tenancy agreement is submitted into evidence.

The Tenant seeks compensation of one month's rent for "lack of peace and quiet". During the hearing, the Tenant clarified that this amount was compensation for the month of February 2023. The Tenant stated there were problems from the tenants in the lower suite from the beginning of the tenancy. The Tenant stated that police attended at the property several times due to one of the downstairs tenants, SJ. The Tenant submitted police file numbers into evidence. According to the Tenant's application, there was constant hitting on the Tenant's floor and loud music. The Tenant stated that SJ also yelled at the Tenant and her children. According to the Tenant, SJ was later charged with mischief and spent three days in jail. The Tenant stated that she had to leave the rental unit for two nights and stay at a hotel. The Tenant acknowledged receipt of a \$400.00 rent reduction from the Landlord for March 2023. The Tenant stated that SJ's behaviours have continued. The Tenant denied that she has control of the heat or breaker box for the downstairs unit. The Tenant stated the police have told her it was no problem for her to call them.

The Tenant stated that she also didn't have peace and quiet due to the rental property being listed for sale in February 2023. The Tenant estimated that there were a total of five or six showings that month, which were every weekend and one or two during the week.

The Tenant stated that she is now dealing with post-traumatic stress disorder and trauma, due to the stress relating to her residence, police attending the property, and realtors as well as strangers in her home.

The Tenant submitted that she wants the Landlord to abide by the Act and the regulations. The Tenant stated that the Landlord laid a “live wire” through the Tenant’s yard, into the Tenant’s shed, and into the downstairs tenants’ yard without notice. The Tenant stated that her children and pet plays in the yard. The Tenant argued that the yard is not a common area as there is a separating line.

The Tenant’s application also refers to an incident involving the Landlord knocking on her door and serving the Tenant’s teenage daughter a 24-hour notice for repairs. The Tenant’s application indicates that the Landlord was putting his hands in the air at her daughter, going by slowly and staring at her daughter. The Tenant seeks an order suspending or setting conditions on the Landlord’s right to enter the rental unit.

In response, DP noted the Tenant did not submit any receipts to substantiate the amount of compensation sought. DP stated there were complaints right away from the Tenant about the basement tenant and noise. DP referred to a letter given by the Landlord to SJ dated January 31, 2023. DP submitted SJ was clearly told that excessive noise must cease immediately. DP explained that the Landlord then started receiving complaints about the Tenant from SJ as often as the Landlord was receiving complaints from the Tenant. DP refers to notes which mention one tenant playing music, the other banging on the floor, then the first tenant bangs on the ceiling, the other turns off the breaker, and then the heat gets turned off. DP questioned how the Landlord was supposed to figure out who was in the wrong and who was to be evicted. DP submitted that after the Landlord had communicated with both the Tenant and the downstairs tenants, the Landlord determined that this was a “he said, she said” situation. DP referred to correspondence records submitted into evidence by the Landlord and the Landlord’s written statement. DP stated that the police were called by the Tenant and not by any neighbour or any other person. The Landlord submitted a list of police file numbers with dates and constables called to the property, which shows that seven calls were made in February 2023. DP stated that she and the Landlord have been clearly told by the police that these are nuisance calls. DP stated they were told that at some point there could be a complaint to the city under nuisance bylaws and a fine issued to the Landlord.

DP acknowledged the Landlord gave a notice to enter to the Tenant's underage daughter. DP explained that after the Landlord sought her advice, the Landlord realized he needed to serve the notice on an adult, so he did not follow up with entry. DP stated that the Tenant's allegation of the Landlord waiting for the Tenant's daughter to be home alone is a false accusation. DP stated that there was no harassment towards the Tenant's daughter. DP stated that she and the Landlord went to the police to put in a statement regarding this matter.

DP explained that the tenants in the lower suite have an electric vehicle, and the Landlord helped them run an extension cord through the yard so that the downstairs tenants would not be using the Tenant's plug. DP stated the Landlord did this to keep the peace between the tenants. DP submitted the Landlord did not disturb either tenant and was doing his best to not further exacerbate the tenants' conflict.

The Landlord submitted listing and cancellation documents to confirm that he listed the property for sale on February 9, 2023 and canceled the listing by February 28, 2023. The Landlord also submitted a witness statement from his listing agent, BA. According to BA's statement, she received multiple complaints from the Tenant and the downstairs tenants about each other during the period that the property was listed for sale. BA also indicated that she no longer felt comfortable with showing the property and advised the Landlord to cancel the listing.

### Analysis

*1. Is the Tenant entitled to compensation of \$2,100.00 for monetary loss or other money owed?*

Under section 28 of the Act, a tenant is entitled to quiet enjoyment, which includes reasonable privacy and freedom from unreasonable disturbance. According to Residential Tenancy Policy Guideline 6. Entitlement to Quiet Enjoyment ("Policy Guideline 6"), a breach of the entitlement to quiet enjoyment means "substantial interference with the ordinary and lawful enjoyment of the premises". Policy Guideline 6 further states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. 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 it.

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 Act. Policy Guideline 6 states that 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.

As further stated in Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss, 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 this case, the Tenant submitted her text message correspondence with the Landlord into evidence. These records contain allegations about noise caused by the downstairs tenants' TV, music, partying, dog, or hitting the ceiling. However, I find the Tenant has not submitted any sound recordings or witness statements to substantiate these complaints. I find the Tenant has not provided sufficient evidence to demonstrate the extent of the noise levels and whether they were unreasonable. Moreover, I find the Tenant also has not provided evidence to show how long the noise is alleged to have persisted on each occasion. I find the text messages do not provide this crucial information. I find the Tenant has not submitted a noise log or other evidence to clearly explain the dates, start and end times, and descriptions of the alleged noise incidents in February 2023. I accept the Tenant called the police on the downstairs tenants seven times in February 2023. However, I find it is unclear whether the Tenant was justified to do so on each occasion or whether this simply served to further escalate the conflict between the Tenant and the downstairs tenants.

In addition, I find the Tenant has provided little details about the property showings. I find the property was listed for sale between February 9 and 28, 2023. The Tenant's evidence is that there were five or six showings during this period. I find the Tenant did not provide details to explain the dates, times or durations of these showings, whether the real estate agent was present, if anything particular happened during these showings, or why the Tenant found the showings to be disruptive.

Under these circumstances, I find there is insufficient evidence to conclude that the Tenant had suffered a "substantial interference" with the ordinary and lawful enjoyment

of the rental unit in February 2023, such that the Tenant's entitlement to quiet enjoyment was breached.

Accordingly, I dismiss the Tenant's claim for compensation of one months' rent for loss of peace and quiet during the month of February 2023, without leave to re-apply.

*2. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?*

A landlord must not enter a rental unit except in one of the circumstances described under section 29(1) of the Act. These circumstances include, among others, when:

- the tenant gives permission at the time of entry, or
- at least 24 hours and not more than 30 days before the entry, the landlord gives a written notice that includes the purpose for entering, which must be reasonable, and the date and time of the entry, which must be between 8 am and 9 pm unless the tenant otherwise agrees.

Under section 70(1) of the Act, the director may, by order, suspend or set conditions on a landlord's right to enter a rental unit under section 29 of the Act.

In this case, I do not find the evidence to indicate that the Landlord has entered or attempted to enter the rental unit contrary to the requirements of section 29 of the Act. I accept there was an incident where the Landlord knocked on the Tenant's door and gave a notice of entry to the Tenant's teenage daughter. I find the Landlord later learned that this notice was not properly served and therefore did not follow up with the entry. I find the Landlord did not enter into the rental unit on this occasion. I find there is insufficient evidence to suggest that the Landlord has or is likely to enter the rental unit without complying with the requirements of section 29 of the Act. In addition, I find the property is no longer listed for sale, and there are no planned showings at this time which may need to be suspended or restricted for any reason. Based on the foregoing, I find there is insufficient evidence to show that an order to suspend or set conditions on the Landlord's right to enter the rental unit is appropriate or necessary at this time. Accordingly, I dismiss the Tenant's claim under this part without leave to re-apply.

*3. Is the Tenant entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?*

While the Act contains restrictions on a landlord's right to enter a "rental unit", the Act does not require notice to be given for entry onto "residential property".

The Act defines "rental unit" as "living accommodation rented or intended to be rented to a tenant". "Residential property" is defined to include the building in which one or more rental units or common areas are located, the parcel of land on which the building is located, and any other structure located on the parcel of land.

According to Residential Tenancy Policy Guideline 7. Locks and Access, the Act nevertheless recognizes that the common law respecting landlord and tenant applies. Therefore, unless there is an agreement to the contrary, entry on the property by the landlord should be limited to such reasonable activities as collecting rent, serving documents and delivering Notices of entry to the premises.

I accept the Landlord's evidence that he entered the Tenant's yard in order to run an extension cord for the downstairs tenants and did so with the intent to keep the peace between the upper and lower suite tenants. I find this was a reasonable purpose for a brief entry onto the residential property. I find there is insufficient evidence to show that the Landlord's presence was prolonged or had unreasonably disturbed the Tenant's family. I find the Landlord did not enter the rental unit. I find there is insufficient evidence that the extension cord poses a safety hazard. Therefore, I do not find it is appropriate or necessary to make an order that the Landlord comply with the Act, the regulations, or tenancy agreement as a result of this incident. The Tenant's claim under this part is dismissed without leave to re-apply.

Conclusion

This application is dismissed in its entirety without leave to re-apply.

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 16, 2023

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Residential Tenancy Branch