



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to have the Landlord Ordered to comply with the Act, regulation, or tenancy agreement.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

### Issue(s) to be Decided

1. Has the Landlord breached the *Residential Tenancy Act*, Regulation or tenancy agreement?
2. If so, has the Tenant met the burden of proof to obtain a Monetary Order as a result of that breach?

### Background and Evidence

The parties agreed that the Tenant has been a resident in this building since May 2007 and began occupying the current rental unit in approximately February 2009. Rent is payable on the first of each month in the amount of \$348.00. The parties attended dispute resolution on September 1, 2009 when the Landlord was ordered to comply with the Act and not restrict the Tenant's guests from accessing his rental unit.

The Tenant affirmed that on the night in question the landlord's front desk clerk called the police to attend his rental unit without warning and that when the police attended they told his guest that she should leave as it was not safe there for her. He said that his guest told him that the front desk clerk told her that she could not visit him the next day. When asked why the Landlord would call the police, the Tenant stated that he was probably cursing his guest because she wanted money. He said he might have been angry at her but that he did not threaten to kill her or anything.

The Tenant advised that he is seeking enforcement of the September 2, 2011 decision because the Landlord's action of calling the police has restricted his guest's access. He is seeking \$200.00 for the two days surrounding this event.

The Tenant confirmed that he did not have evidence, other than his guest telling him what she was told by the desk clerk, to prove she was restricted from visiting him.

The Tenant is also seeking \$11.16 for one day's rent because the Landlord had the pest control spray his unit while he was out. He said that the Landlord probably posted a notice on his door and a neighbour probably took the notice off because he has been known to do that.

The Landlord affirmed the police were called because of the graphic nature of the Tenant's threats. She referred to their documentary evidence which included their written statements of the events, a copy of their violent incident report, a letter from the Tenant's guest's probation officer, and copies of the daily log, when she stated that their evidence was clear of what had transpired.

The Landlord confirmed that the desk clerk did suggest to the Tenant's guest that she not go to his room as it may not be safe but that he did not say she could not go. She said that they are well aware of the September 2009 decision so they do not restrict the Tenant's guests.

The Landlord confirmed a notice was posted to the Tenant's door for the pest control spraying and that this was a follow up spray. She confirmed the Tenant was well aware of the process and knew about follow up sprayings so it should not have been a surprise to him.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on a balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and

3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case, the Tenant has the burden to prove the Landlord breached the Act, regulation or tenancy in relation to the events of September 14 and 15, 2011, when he alleges the Landlord restricted his guest and sprayed his unit without notice.

The evidence the Tenant submitted pertaining to the events was verbal testimony comprised of hearsay from his guest which was disputed by the Landlord's documentary evidence and verbal testimony. I do not accept the Tenant's interpretation that by calling the police the Landlord was restricting his guest in contravention of section 30(1)(b) of the Act.

I accept the evidence that the Landlord followed section 88 of the Act by posting notice of entry on the Tenant's door prior to entering to spray for pest control.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, the party with the burden of proof has not met the onus to prove their claim without further evidence and the claim fails. Accordingly, I find the Tenant's disputed verbal testimony insufficient to meet the burden of proof and his claim is hereby dismissed in its entirety.

### Conclusion

I HEREBY DISMISS the Tenant's claim, 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: October 18, 2011.

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Residential Tenancy Branch