



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, PSF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62; and
- an order to the landlords to provide services or facilities required by law pursuant to section 65.

All the parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The tenant testified that she served the landlords with the dispute resolution package on 1 October 2014 by registered mail. The tenant provided me with a Canada Post customer receipt that showed the same. The landlords confirmed that they were in receipt of the dispute resolution package. On the basis of this evidence, I am satisfied that the landlords were deemed served with notice of this application pursuant to sections 89 and 90 of the Act.

The tenant and landlords served each other with their evidence packages. The tenant and landlords each confirmed receipt of the others' evidence. I am satisfied that the parties were served with the evidence before me pursuant to section 88 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for her damage or loss? Is the tenant entitled to an order that the landlords comply with the Act, regulation, or tenancy agreement? Is the tenant entitled to an order that the landlords provide a facility or service?

### Background and Evidence

While I have turned my mind to all the documentary evidence, miscellaneous letters and email messages, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The rental unit is one of two units in the lower level of a detached home. The rental unit is a one bedroom unit. The tenant previously resided in the lower level bachelor unit. At the beginning of this tenancy in the rental unit, the landlords occupied the upper level of the home and there were different tenants in the bachelor unit. Currently, there are different tenants living in the second lower level unit and the upper level is now tenanted.

I was provided with a copy of the tenancy agreement signed by the landlords and tenants. The tenancy began on 1 October 2013. Monthly rent of \$650.00 was payable on the first. Clause 3 of the rental agreement sets out, among other things, that the rent includes "Internet". The tenant's security deposit from her tenancy of the bachelor unit was carried over and applied to this tenancy. The landlords continue to hold the tenant's security deposit of \$295.00, which was paid 1 May 2013. Clause 17 of the tenancy agreement indicates that there was a one-page addendum.

I was provided with a copy of the addendum to the tenancy agreement, which was initialed by all three parties. The tenant acknowledges that the initials appear to be her own. This addendum set out, among other things, that internet would be provided, that the unit was for single occupancy use and that the tenant was aware that the outside of the residence is under 24 hour surveillance for the protection of the occupants and the property.

Both Clauses 3 and 17 and the addendum terms enumerated above were the same as those contained in the tenancy agreement that the tenant and the landlords entered into on 1 May 2013 for the tenancy of the bachelor unit.

The tenant claims for the following damages:

<b>Item</b>	<b>Amount</b>
cost of first month of rent for new place	\$650.00
cost of deposit for new place	325.00
return of security deposit	295.00
estimated cost of moving expenses	310.00
four days of lost wages	480.00
<b>Total Monetary Order Claimed</b>	<b>\$2,060.00</b>

The tenant claims:

- that the landlords' harassment, surveillance, threats and lack of honesty are infringing on her right to peaceful enjoyment; and
- the landlords are failing to comply with the Act or the tenancy agreement by:
  - not using written correspondence to communicate with the tenant;
  - allowing different individuals to occupy rental units than those that were there at the commencement of the tenancy;
  - failing to provide written notice regarding entry into the unit; and
  - not complying with the Act in respect of the recent rent increase; and
- the landlords are failing to provide services required under their tenancy agreement.

The tenant testified that her nerves are frazzled and that she has been in contact with the RCMP on two occasions to get advice on "harassment, bullying and other criminal charges that could be appropriate."

From the parties' evidence, it appears that the relationship between the landlords and tenant is strained. The tenant testified that the relationship between she and the landlords began to sour 1 September 2014. The landlord RA testified that the tenant's use of the emoticon "smiley" in her email of 2 July 2014 was indicative of their prior friendly relationship. The landlord RA testified that the relationship soured because of the tenant's spotty rental payment record from 1 July 2014 onward. The rent ledger indicates rental arrears from 1 July 2014 to 24 September 2014 and 1 October 2014 onwards. Current rental arrears are \$10.00. The tenant testified that three of her late rental payments were the result of the landlords' own mistakes or failure to provide services.

The tenant testified that she asked the landlords to only communicate with her in written correspondence and not email, but that they refused to do so and continued to contact her through email. The tenant alleges that the landlords are constantly emailing her. The landlord RA testifies that when the tenant needs anything she does not use formal methods of communication. The tenant testified that the emails she provided prove harassing behavior from the landlords. The landlord RA testified that he did not harass the tenant.

I have reviewed the email correspondence provided to me by the tenant and landlords. Both the landlords and tenant express frustration regarding the nonpayment of rent. The tenant appears to become angry and frustrated with the landlords' insistence on being paid rent owing. In particular, two of the tenant's emails of 6 September 2014 and one on 7 September 2014 could be characterized as aggressive. The tone of the

emails, both from the landlord RA and tenant, continues to decline throughout the month of September.

The tenant also alleges that the landlords' failure to provide internet services has caused her various losses. The landlord submits that he is providing internet service, but that the tenant's own computer equipment is inadequate. The landlord RA testified that there is functioning wireless internet available to the tenant and that whether the tenant connects to it is her own issue. In fact, the landlord RA provided evidence that the current upstairs tenants are extensive internet gamers and have no problems using the internet.

The tenant testified that she is afraid to be there by herself because there are three men upstairs whom the tenant described as "Oriental students" and another man living in the bachelor unit. The tenant later provided contradictory testimony, indicating that she never said she was afraid of the other tenants, but that she signed on to be neighbors with other tenants. The landlord RA testified that the upstairs tenants are nice guys.

The tenant testified that she was not aware of the surveillance until her occupation of the rental unit and that she shared her privacy concerns with the landlords at that time. The tenant testified that the landlords assured her that the surveillance was for the purpose of household insurance; however the tenant alleges that the landlords are using the cameras to take pictures of licence plates and see what or who is coming and going from the property. The landlord RA testified that the surveillance system is real time and does not record. The landlords view the screen if they hear something or the dogs start barking. The cameras face out to the street and the side of the house. The landlord RA estimates that they view the live stream once every ten days.

The tenant testified that she was not provided with a forwarding address for the landlords. The landlords provided evidence that they have not changed their address and currently use the same address as their fixed address. The tenant testified that the landlords were lying.

The landlord DA testified that the smoke alarms are sensitive and will go off when someone is making toast. The landlord testified that the alarms are all connected so that when one goes off they all do. The landlord testified that there was no faulty wiring and that the only issue was with a bathroom timer. The landlord testified that he provided notice when he was going to make the repair and that there was previously no issue. The landlord also provided notice that he wished to enter to show the rental unit. The landlord testified that he had a typo in this email and that he intended to give 24 hours and not 2 hours. I accept that this was a typo. The landlord denies that these interruptions infringe on the tenant's right to quiet enjoyment.

On or around 24 September 2014, the tenant and landlord RA were involved in a heated discussion. The tenant suggested that if she had done all the things that the landlord RA alleges that he should have gone to the police and that by not doing so he has indicated that he did not feel threatened. The landlord RA says that the tenant is correct and that he should have gone to the police. The landlord DA testified that she heard the entire exchange from the upstairs of the property. This conflict resulted in the tenant's handwritten letter of 26 September 2014 where she reiterates her insistence upon exclusive written correspondence.

I was provided a copy of the notice of rental increase.

### Analysis

I have reviewed all the evidence provided to me by the tenant regarding the current state of the tenancy. I find that the tenant was alerted about the security system when she entered into the agreement. I accept the landlord's testimony that he only checks the live stream camera once every ten days. This level of interference is akin to looking out the window. While there is evidence that their relationship is deteriorating (as evidenced through their email correspondence) it does not rise to such a level where I can accept that the tenant has proven her claim. I find that the landlords' conduct does not interfere with the tenant's right to quiet enjoyment. (This should not be considered a comment on the legality of the landlords' surveillance system.)

There are numerous sections in the Act that require written communication between a landlord and tenant. While written correspondence is the "gold standard" under the Act, not all correspondence between a landlord and a tenant must be of a specific form. Except where specified by the Act, correspondence may be oral or by email. I find that there is no general requirement that communication be exclusively through formal written correspondence. Written notice of landlord's entry into the rental unit is one such scenario that does require formal written notice. The landlord did attempt to provide notice of entry by email. This is not an acceptable method of communication for delivering this notice. I order that the landlord provide written notice where required to under the Act.

The tenant claims that she entered into the tenancy agreement on the understanding that the landlords would be occupying the upstairs unit and a specific tenant would be occupying the second downstairs unit. The tenant may not dictate who occupies the other units on the property.

In respect of the tenant's claim that the landlords are failing to provide internet services under the tenancy agreement, I find that the landlords are providing internet service

within the tenancy agreement. The landlords and the other tenants do not have issues connecting to the internet. I find that if the tenant is having issues with connectivity they are in relation to her own equipment and that the landlords are providing the service that they are required to under the tenancy agreement.

In the tenant's application she did not apply to dispute the notice of rent increase. I do not consider this issue to be before me and will not consider it.

Section 67 of the Act provides that, where an arbitrator has found that damages or losses result from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must provide evidence of the monetary amount of the damage or loss.

The tenant has shown that the landlord failed to provide written notice in proper form when he attempted to provide email notification of entry to the rental unit. I do not consider that the damage or loss for which the tenant claims stem from this contravention of the Act by the landlord. Accordingly, I dismiss the tenant's monetary claim without leave to reapply.

### Conclusion

I order that the landlord communicate by written notice where required to by the Act and provide proper written notice to the tenant of any requests to inspect the rental unit.

I dismiss the remainder of the tenant's application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: November 24, 2014

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Residential Tenancy Branch

