



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC, ERP

### 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; and
- an order that the landlord make emergency repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The co-landlord FE primarily spoke for both co-landlords (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the tenant's application for dispute resolution and the parties' evidence. The parties confirmed receipt of their respective materials. The tenant noted that the landlord's evidence was served late but confirmed receipt. I find that the tenant's application and the parties' evidence were sufficiently served in accordance with section 71(2)(c) of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order as claimed?

Should the landlords be ordered to make repairs or emergency repairs to the rental unit?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in April, 2014. The current monthly rent is \$710.00 payable on the first of the month. The rental building is a multi-unit complex and the tenant resides on the ground floor. For a period of time the tenant was appointed the caretaker of the building by the landlords but she no longer has those duties.

The tenant testified that since moving in to the building the tenant has been the victim of harassment, bullying and attacks by other tenants in the rental building. The tenant identified the primarily instigator of the harassment as the tenants who reside in the rental unit above hers (the "problem tenants"). The tenant said that she has reported the attacks on numerous occasions to the landlords throughout the tenancy. The tenant submitted into written tenancy copies of her various correspondences to the landlord reporting the harassment. The tenant also included in her written submissions copies of threatening and insulting notes that the tenant said were written by the problem tenants. The tenant described instances of physical attacks, verbal insults, and a course of constant and escalating harassment. Included in the tenant's written evidence were warning letters issued by the landlords to the other tenants who were engaging in the harassment activities. Some of the behavior that the landlords identified in the letters include; abusive language, picking fights and calling emergency services without cause.

The parties testified that the landlords had issued a Notice to End Tenancy for Cause (the "1 Month Notice") to the problem tenants in the past. The parties testified that the 1 Month Notice was issued in August, 2016 and was the subject of a hearing before the Residential Tenancy Branch in September, 2016. The parties said that the 1 Month Notice was cancelled as the landlords had incorrectly completed the 1 Month Notice.

The landlord testified that since the September, 2016 hearing they have not made any subsequent attempts to end the problem tenants' tenancy. The landlord said that they now believe that the source of the conflict is the tenant.

The tenant testified that the harassment by the problem tenants is ongoing and causes her daily stress and fear. She said that she is unable to relax in her home and feels concern about her physical well-being.

The tenant seeks an order that the landlord perform emergency repairs to the rental unit. The tenant testified that water collects on the floor of the bedroom in the rental unit. The tenant said that the pooling water was first noticed and reported in November, 2016 but not acted upon until the issue recurred in the summer of 2017. The tenant said that the issue has not yet been resolved and due to the pooling water she believes that mould is now growing in the rental unit. The tenant said that she is unable to use the bedroom because of the damage.

The landlord testified that the water leaks were first reported in the summer of 2017 at which point they took reasonable steps to address the problem. The landlord said that they contacted their insurer, hired plumbers to come and inspect the issue and perform repairs. The landlord said that the rental building is 40 years old and they have consulted with contractors to determine the best method to resolve the issue. The landlord submitted into written evidence copies of invoices from plumbers and correspondence with the insurer in support of their position that reasonable measures are being taken.

### Analysis

The tenant has requested monetary compensation for loss of quiet enjoyment. Section 67 of the *Act* allows me to issue a monetary award for damage or loss. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant makes a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a substantial interference with the ordinary and lawful enjoyment of the premises. 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 these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

The tenant testified that since the start of the tenancy she has been the subject of an unrelenting campaign of harassment by another tenant in the rental building. The tenant said that the harassment involves verbal insults, physical attacks, threatening notes, derogatory comments and general unpleasantness. The tenant testified that the landlord is aware of the constant attacks but the situation has not resolved. The tenant said that the continued harassment has caused her considerable stress and her health has declined as a result.

The tenant submitted into written evidence letters issued by the landlord to the problem tenants showing that the landlord is aware of the situation. The parties testified that the landlord has made one attempt to end the problem tenants' tenancy but has taken no further action since the September, 2016 hearing.

I accept the tenant's evidence that the problem tenants' behaviour and interference has been an ongoing and regular aspect of this tenancy. I find that the tenant's right to quiet enjoyment of the rental unit has been interfered with by the other tenants' aggressive behavior and unconscionable attacks. I find that the landlords were aware of the issue and took some steps in an attempt to resolve the conflict by ending the tenancy of the problem tenants. I accept the testimony of the parties that since the 1 Month Notice was cancelled at the September, 2016 hearing the landlords have chosen to take no further action against the problem tenants. The tenant said that the problems have been ongoing. The landlord testified that they are aware that conflicts among the tenants are an ongoing issue in the rental building. I find that the landlords have not taken reasonable steps to address the ongoing issue. It is not reasonable to allow harassment and attacks to continue against a tenant after one attempt to resolve the issue fails. I accept the testimony of the parties that the 1 Month Notice was cancelled as a result of the landlord's failure to correctly complete the form. Under the circumstances I find that the tenant suffered a loss of quiet enjoyment as a result of the landlord's failure to act after September, 2016.

While I find that the tenant suffered loss of quiet enjoyment as a result of the landlord's inaction after September, 2016 I am not satisfied that the tenant has provided sufficient evidence to justify the full amount requested. The undisputed evidence of the parties is that the landlords made a genuine attempt to resolve the conflict by issuing a 1 Month Notice to the problem tenants in 2016 and attending a hearing in September, 2016 in pursuit of the 1 Month Notice. While the harassment by the problem tenants has been ongoing throughout the tenancy I find that the landlord took reasonable steps until September, 2016 to attempt to resolve the issue and ensure the tenant's right to quiet enjoyment was protected. It was after the September, 2016 hearing that the landlord chose to take no further steps. Under the circumstances, I am issuing a monetary award in the amount of \$1,500.00, which reflects that the tenant did suffer a loss of quiet enjoyment in the tenancy as a result of the landlords' failure to take reasonable steps.

Section 33 of the *Act* describes "emergency repairs" as those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property, and made for the purposes of:

- repairing major leaks in pipes or the roof,
- damage or blocked water or sewer pipes or plumbing fixtures
- the primary heating system
- damaged or defective locks that give access to the rental unit
- the electrical systems
- in prescribed circumstances, a rental unit or residential property

I find that based on the evidence of the parties the nature of the repairs requested falls short of being emergency repairs. The parties have testified that while water pools in the rental unit

bedroom the source of the water is not believed to be leaks or backed up pipes. The tenant has said that she continues to reside in the rental unit. While she said she does not use the areas in the bedroom that have suffered damage, there was little evidence provided regarding any effect the damage has had on the tenancy. The landlord provided evidence of the repairs that have been performed and testified that they are planning for further repairs as advised by contractors. I find that there is insufficient evidence to support the tenant's application for an order for emergency repairs. I dismiss this portion of the tenant's application with leave to reapply.

### Conclusion

I issue a monetary order in the tenant's favour in the amount of \$1,500.00. As this tenancy is continuing, I allow the tenant to recover \$1,500.00 by reducing the monthly rent payments by that amount on the next monthly rental payments to the landlords. In the event that this is not feasible, I issue a monetary Order in the tenant's favour in the amount of \$1,500.00. The tenant is provided with these Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 27, 2017

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Residential Tenancy Branch