



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNR, AAT, OLC, MNDCT**

### **Introduction**

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

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "Ten- Day Notice") pursuant to section 46;
- An order requiring the landlord to allow access to the unit pursuant to section 30; and
- An order requiring the landlord to comply with the *Act*, regulation and/or the tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given the opportunity to make submissions as well as present affirmed testimony and written evidence.

The landlord acknowledged receipt of the Notice of Hearing and the Application for Dispute Resolution. No issues of service were raised. I find the landlord was served under section 89 of the *Act*.

The tenant submitted an Amendment to her application on July 27, 2018 adding a monetary claim of \$2,220.33 for compensation under section 67 of the *Act*. The landlord acknowledged service of the tenant's Amendment and supporting documents.

At the hearing, the parties stated the tenant had vacated the premises. Accordingly, the tenant withdrew her application under sections 46, 30 and 62.

Issue(s) to be Decided

Is the tenant entitled to the following:

- A monetary order for compensation under section 67 of the Act?

Background and Evidence

The parties agreed they entered into a tenancy agreement which began on May 3, 2018. The tenant vacated the unit on July 15, 2018. Rent was \$2,300.00 a month payable on the 30<sup>th</sup> of the month. The agreement was for a fixed term 1-year tenancy. The unit was one and a half floors of a house. There was a downstairs apartment as well as the tenant's unit.

A copy of the tenancy agreement was submitted in evidence.

A security deposit of \$1,150.00 was payable at the beginning of the tenancy. The parties dispute whether this was paid. The tenant stated she had a cancelled cheque but overlooked uploading it. The landlord stated he did not receive the security deposit.

The landlord stated he does not keep a rental ledger. The landlord submitted no documentary evidence for this hearing.

At the beginning of the tenancy, the tenant stated she agreed with the landlord that the hydro bill for the entire house would be in her name. The hydro account was accordingly transferred to her name. The tenancy agreement states that the hydro account would be apportioned between the two units in the building, with the tenant paying 70%. The relevant portion of the agreement states [as written]:

*Garbage, utility and hydro 70% of bill, if basement no tenant than 100%. own lawn mowing*

The tenant testified she paid \$1,840.00 for hydro for the building during the time she was in occupancy of the unit. The tenant provided copies of hydro invoices in support of her claim. The tenant testified she did not receive any reimbursement.

The tenant testified problems between her and the landlord started shortly after she, her partner and four children moved in to the unit. She testified there was a flimsy lock on the one door separating her portion of the unit downstairs from a second apartment. She said the landlord had not lived up to his promises to get stored items out of her unit.

The tenant testified that on May 8, 2018, she and her mother were waiting for the children to return from school. They were standing in front of the unit. The tenant overheard the occupant of the building's only other unit discussing drug paraphernalia. The tenant asked the occupant to stop talking about that as her children were coming home from school.

The tenant testified the occupant of the second unit, who was physically imposing, suddenly verbally assaulted her and swore at her. The tenant said she felt personally threatened and in physical danger. She testified the person looked like a "deranged drug addict".

The tenant called the police who attended at the scene. A copy of the incident report was submitted.

The incident report indicates the police spoke with the landlord and he undertook to put a lock on the downstairs door "to ensure that the downstairs tenants could not access her [the tenant's] portion of the residence."

Although this advice does not appear in the filed incident report, the tenant testified the police urged to begin searching for another apartment right away.

The tenant submitted a letter from her mother dated July 27, 2018 stating that she witnessed the incident on May 8, 2018.

LF, the tenant's mother, stated in part in the letter:

*My daughter had just moved in, perhaps a few days, when I brought her children home from school, and the downstairs woman was yelling and swearing foul language at [tenant] that could be heard thru the floorboards and windows. [Tenant] was visibly shaken and worried for the safety of herself and children, so I stayed for almost an hour until [husband of tenant] arrived home so she would not be alone.*

In the letter of July 27, 2018, LF stated that, following encounters with the landlord, the tenant was “a nervous wreck, shaking and broke down and cried as well”.

The tenant claims she became terrified of the occupants of the other unit. She stated the door separating their units had a hook and eye latch when she moved in. The tenant testified the lock was of no practical protection and could be pushed aside easily. Because one of the unit's bedrooms was in the lower level, this was particularly concerning to her. The downstairs bedroom was intended for one of her children and the tenant did not believe the door was adequately secure. The tenant submitted a picture of the door showing the hook and eye latch.

The tenant testified she spoke with the landlord on May 8, 2018 and requested that a proper lock be installed. The police incident report confirms the police spoke with the landlord about the lock. The tenant states the landlord replaced the latch. However, the replacement was a padlock which the tenant stated was too small to provide effective security. The tenant testified she believed her unit was insecure throughout the tenancy causing her to feel she felt insecure and worried about the safety of her family.

The tenant submitted a picture of the padlock. The landlord testified this lock was adequate. He stated he responded promptly and effectively to the tenant's concerns about security.

The tenant testified the landlord assured her on May 8, 2018 that he would evict the occupants of the other unit. The landlord testified he never made such a promise.

The tenant submitted a copy of an email dated May 22, 2018 addressed to the landlord in which she complains about the occupants of the other unit: their cigarette/drug smoke, their barking dog, the loud swearing and “their drug dealer” who came to her unit.

In this email, the tenant confirms her understanding that the landlord was going to evict the occupants of the second unit. The email states in part as follows [as written]:

*Hi I just wanted to send you an email in regards to the people downstairs. I am wondering if you can clarify on what kind of notice you gave the people downstairs. Have you given them notice to have a move out date, I was under the impression they would be moving by the end of the month but not sure.*

*I have been dealing with the strong sent of cigarettes and who knows what other smoke smells that come into my upstairs. I also smell it even more downstairs when my son sleeps.*

*I also have had a problem with the noise of their dog. This dog has a very loud bark and they leave it at home. This has been happening every other night and it lasts hours.*

*The other noise with their constant swearing loudly when home.*

*And having no regards of even having their drug dealer come up to my window asking me to help them with their water problem,*

*I don't even know this man.*

*I feel I am hurding my kids into the house everything I see the nabours.*

In the email, the tenant complains that the occupants of the other units are using all the garbage and recycling bins. She continues [as written]:

*If they are already moving out at the end of this month then I will again be as patient as I can for the time being.*

*But I wanted to clarify this house it was causing my family stress and I don't see us being a good fit if they remain living here. I have been very patient in that I am sharing a house with drug addicts as it seems you had no idea that they were. But I want to be clear that my family can't stay around this kind of life style.*

The landlord claims the occupants of the other unit were long time good tenants. He testified he never informed the tenant he would evict them. The landlord suggested the tenant was fabricating complaints about the unit so she could move out as soon as she had an opportunity for better accommodation with government subsidized housing and get out of her obligation to pay him. The landlord acknowledged receipt of the tenant's email but claimed her complaints were made up.

The tenant testified the verbal abuse from the occupants of the second unit continued. She stated the occupants of the other unit would yell at her out their window and tell her they would report her to the Ministry for child neglect. The tenant testified she called the landlord and complained several times to no avail.

The landlord denies the tenant continued to complain. He testified that the incident on May 8, 2018 was the only incident involving the occupants of the downstairs unit and the “problem was fixed on the same day”.

The tenant stated she realized in May 2018 that the landlord would not help her; she realized she could not safely and quietly live in the unit. She testified she began an active search for a new place at the first of June 2018. In June 2018, she located a new home to move into; however, it could not be occupied until mid-July 2018.

Before her rent was due on June 31, 2018, the tenant informed the landlord that she was moving out of the unit on July 15, 2018. The landlord issued a 10 Day Notice for Unpaid Rent or Utilities on June 30, 2018. The tenant did not pay rent on June 31, 2018. The tenant disputed the Notice.

Copies of many texts were submitted between the parties in which the hostility increased. The landlord is quoted in a series of texts (undated):

*You will be paying... No one have right to live in home without pay you can watch me  
I will remove you  
I can get police for you*

The tenant wrote a text to the landlord which appears to be dated July 8, 2018:

*... you have lied to me many times I have paid rent for a place that was stressful and a terrible place for my family. I have paid for hydro for a whole house you give me no money toward. I wrote you in writing my concerns and you ignored me. I told you I have found a place for my family and I cannot move till the 15! You put my whole family in jeopardy for 2 months. Now I am going to ask for compensation and my deposit back.*

The tenant claims reimbursement for the loss of quiet enjoyment of 40% of the rent for May and June 2018 and 30% of the hydro bill she paid during the tenancy.

The tenant itemized her claim as follows:

ITEM	AMOUNT
40% reimbursement of rent for May and June (40% of \$2,300.00 x 2)	\$1,840.00
Reimbursement of 30% of amount paid for hydro during the tenancy	\$380.00
<b>TOTAL</b>	<b>\$2,220.00</b>

The tenant submitted copies of hydro invoices during the period of the tenancy. The landlord did not deny that the tenant had paid hydro for the entire house. However, he said the tenant did not submit proper receipts to him and he could not therefore reimburse her. The landlord also said he was not going to pay the tenant anything because she did not pay other utilities she promised to pay (such as garbage) and she did not pay rent for July 2018.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

*Tenant's claim: reimbursement for hydro payments*

The tenant submitted evidence regarding the payment of the hydro account associated with the building in which there were two units. I accept the tenant's evidence, supported by the tenancy agreement, that the landlord promised to reimburse 30% of the hydro account that the tenant paid.

I have reviewed this evidence and accept the tenant's claim that she paid 30% more than her share of utilities during the tenancy, being \$380.00. I accept that she was not reimbursed pursuant to the terms of the tenancy agreement

I find the tenant is entitled to a monetary award in the amount of \$380.00.

*Tenant's claim: loss of quiet enjoyment*

Section 28 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

*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;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

*The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* states as follows:

*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 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 entitlement to 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.*

*In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

...

*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 RTA and section 60 of the MHPTA (see Policy Guideline 16).*

*(emphasis added)*

I accept the tenant's testimony, supported by her mother's evidence and by the police incident report, that an altercation occurred on May 8, 2018 between the tenant and the occupant of the other unit in the building. I find the landlord was informed of this altercation because the incident report states the police called him.

I also find the tenant informed the landlord again in her email of May 22, 2018 of her continuing, and increasing, problems with the other occupants.

The landlord testified he did nothing regarding the occupants of the other unit because the problem was resolved after the police were on the premises on May 8, 2018. He denies any warning from the tenant that he had to act upon.

However, I prefer the tenant's version of events, supported by her email of May 22, 2018, that the landlord promised to do something about the other occupants and failed to take any steps to protect the tenant's right to quiet enjoyment.

I find the tenant informed the landlord of the situation, and that the landlord failed to take reasonable steps to correct the interference. I find the landlord failed in his duty to take reasonable steps to correct the situation. On a balance of probabilities, I find the tenant has met the burden of proving significant interference with her quiet enjoyment.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

*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.*

I accept the tenant's testimony she was not aware of the likely disturbance from the neighbors at the time the tenancy began and that the occupants of the other unit disturbed her, and her family's, quiet enjoyment. I accept the landlord was informed of the situation. I find that the tenant was informed by the landlord that he would attend to certain matters, such as security, the removal of stored items and giving the other occupants notice, to address her concerns. I find that these actions did not take place as expected or at all.

I find it was reasonable to expect the landlord to adequately address the tenant's concerns by the end of May 2018, within three weeks of notification by the tenant on May 8, 2018. As the landlord failed to do so, I find the tenant is entitled to loss of quiet enjoyment for the month of June 2018. As the tenant vacated the unit in July 2018 and did not pay rent for that month, I find the tenant is not entitled to loss of quiet enjoyment for that month.

It is difficult to place a monetary value on the tenant's loss of quiet enjoyment for the month of June 2018. I consider the fact that the tenant and her family were able to continue in occupancy of the unit, although I accept the tenant's evidence they would rather have moved out earlier than July 15, 2018 and would have if possible. I have considered the landlord's failure to take any steps, other than replace the door lock with a more secure lock.

In considering all the evidence and testimony, I find it reasonable to award the tenant 25% of the value of the rent (\$2,300.00 for that month) being \$575.00, as a reasonable amount for compensation for loss of quiet enjoyment for the month of June 2018. I accordingly award the tenant reimbursement in this amount for this portion of her claim and dismiss her claims for loss of quiet enjoyment for May and July 2018.

I therefore grant the tenant a monetary award as follows:

ITEM	AMOUNT
Reimbursement of hydro bill	\$380.00
Loss of quiet enjoyment for June 2018	\$575.00
<b>TOTAL</b>	<b>\$955.00</b>

### Conclusion

I grant the tenant a monetary award in the amount of \$955.00.

The landlord is ordered to pay this sum forthwith. The landlord must be served with a copy of this order as soon as possible. Should the landlord fail to comply with this order, the order may be filed in the Small Claims division of the Provincial Court and enforced as an order 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: November 2, 2018

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Residential Tenancy Branch