



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, OLC, MNDCT, LRE

### Introduction

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

- an order suspending or setting conditions on the Landlord's right to enter the rental unit pursuant to sections 29 and 70(1);
- an order that the Landlord comply with the Act, the regulations, or tenancy agreement pursuant to section 62;
- a Monetary Order of \$5,000.00 for the Tenants' monetary loss or money owed by the Landlord pursuant to section 67; and
- authorization to recover the filing fee for this application from the Landlord pursuant to section 72.

The Landlord and the Tenants 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 at the hearing were advised that the Residential Tenancy Branch Rules of Procedure (the "Rules of Procedure") prohibit unauthorized recordings of dispute resolution hearings.

### Preliminary Matter – Service of Dispute Resolution Documents

The Landlord acknowledged receipt of the notice of dispute resolution proceeding package (the "NDRP Package") from the Tenants. I find the Landlord was served with the NDRP Package in accordance with section 89 of the Act.

The Tenants testified they left a USB stick with their digital evidence at the Landlord's front door on September 6, 2022. The Tenants testified that they noticed it was gone later. The Landlord testified he received the NDRP Package but not the USB stick. The Landlord testified that he does not have a computer for viewing digital evidence. The Tenants testified that they have given digital evidence to the Landlord in the past for other hearings, and the Landlord was able to view the evidence at a friend's house.

Rule 3.10.5 of the Rules of Procedure states that "Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence". Rule 3.10.5 further states that "If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered."

Rule 3.14 states that "documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing".

Under Section 90(c) of the Act, evidence attached to the door or to another place is deemed to be received on the third day after it is attached, unless it is earlier received.

Based on the parties' testimonies, I find there is insufficient evidence to suggest that the Tenants had contacted the Landlord prior to the hearing to ensure that the Landlord was able to review the evidence, and that the Landlord had received the evidence at least 14 days before the hearing, or by September 6, 2022. As such, I am unable to conclude the Tenants served the Landlord with their digital evidence in accordance with the Rules of Procedure, and I do not consider it for the purposes of this application.

The Landlord relied on oral testimony for this hearing.

#### Issues to be Decided

1. Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?
2. Are the Tenants entitled to compensation for monetary loss or money owed by the Landlord?
3. Are the Tenants entitled to an order that the Landlord comply with the Act, the regulations, or tenancy agreement?
4. Are the Tenants entitled to recover the filing fee?

### 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.

This tenancy commenced on May 15, 2020 and is month-to-month. Rent is \$900.00 due on the first day of each month. The Tenants paid a security deposit of \$450.00 which is held by the Landlord. The parties do not have a written tenancy agreement.

The rental unit is a cabin located on the residential property. The Landlord resides in a trailer on the same property. There is a wellhouse with an attached shed located between the rental unit and the Landlord's residence.

The Tenants stated that the Landlord has been "harassing" them since they moved to the rental unit. The Tenants stated that the Landlord goes to the Tenants' side without notifying the Tenants.

The Tenants testified that there is an assault charge against the Landlord after he attacked one of the Tenants, SLF, and kicked the Tenants' dog.

The Tenants stated that when SLF walks to get the mail, the Landlord swears at her, calls her "vulgar names", makes rude gestures, and sends dogs after SLF.

The Tenants stated that the Landlord is intoxicated "every second day" and "ruins" the peace and quiet that the Tenants pay for.

The Tenants testified that "last winter", the Landlord was complaining about a truck in the yard. The Tenants stated that the Landlord called the workplace of one of the Tenants, TEF. The Tenants stated that TEF's employer wrote a letter stating that the Landlord called them two days in a row and sounded like he was drunk.

The Tenants testified that "this summer", or several months ago, the Landlord threw the Tenants' belongings out in the yard. The Tenants stated that they have filmed the Landlord throwing their belongings three or four times, including the time that the Landlord attacked SLF with a hammer. The Tenants stated that their personal items were broken when the Landlord dumped the items on the lawn.

The Tenants stated that the Landlord called SLF derogatory names “constantly”.

The Tenants stated that they are seeking \$5,000.00 for loss of quiet enjoyment over the past 2 years.

The Tenants acknowledged there is no evidence that the Landlord went into the rental unit. The Tenants stated that the Landlord comes up to the Tenants’ yard. The Tenants stated that the Landlord has a “no-contact order” which he violates “almost every day”.

The Tenants stated that every day when the Landlord drives by, he makes rude gestures at the Tenant and is yelling and screaming.

The Tenants testified that they had a family gathering a couple of weeks ago for a family member’s birthday. The Tenants testified that the Landlord came up to the rental unit yelling and tried to get their cars towed. The Tenants submitted that they are allowed to have company without the Landlord’s harassment and causing the Tenants embarrassment.

In response, the Landlord testified he has a grass area up near the rental unit which he mows. The Landlord testified that this area is part of his property, not the Tenants’.

The Landlord stated that the Tenants have parties and park on the grass area. The Landlord stated that there were about six vehicles on his grass which he asked the Tenants to remove.

The Landlord testified that in the first year, the Tenants brought home a truck which “destroyed” his driveway and caused the pavement to be damaged. The Landlord testified he asked TEF not to bring it home anymore. The Landlord stated he called TEF’s boss once to ask that the truck be left at TEF’s work as it was causing too much damage.

The Landlord testified that the Tenants do not have access to the wellhouse, which is serviced by the Landlord himself. The Landlord stated that the wellhouse supplies water to both the rental unit and the Landlord’s residence. The Landlord stated the Tenants took the lock off the wellhouse twice. The Landlord stated he had his own belongings in the wellhouse and he had gone up there to remove those items. The Landlord denied having broken the Tenants’ items.

The Landlord stated that the parties share the shed attached to the wellhouse.

The Landlord stated that there was an assault charge against TEF. The Landlord stated that TEF assaulted him and the Landlord's neighbours reported it. The Landlord stated that the matter got stayed in court because the Landlord did not get his evidence in on time.

The Landlord acknowledged that there is an assault charge against him due to an incident with SLF, which is before the courts. The Landlord stated he had a hammer, sign, and door lock with him to put on the wellhouse. The Landlord stated that SLF came around the property and attacked him. The Landlord stated that the matter is still under dispute.

The Landlord stated that when he and his girlfriend go by the rental unit, they receive rude gestures. The Landlord stated that SLF called his girlfriend derogatory names.

The Landlord stated that since he was charged, there has been "absolutely no contact" with the Tenants. The Landlord stated he has "never walked up there and listened to [the Tenants'] window". The Landlord stated that for the last couple of months, he has mostly been staying at his girlfriend's house.

The Landlord stated that the neighbours have come to tell the Tenants to shut their party down more than once.

The Landlord testified he has health issues and cannot deal with the stress. The Landlord stated that he does not have knowledge to use cellphones or email.

The Landlord stated that he has sold the property and will be leaving by the end of September 2022.

In reply, the Tenants stated that they do not party all the time. The Tenants testified that they had birthday parties for their child and their sibling. The Tenants stated that the police were called because the Landlord was throwing their stuff onto the lawn. The Tenants stated that the Landlord drinks all day and cannot control himself when drinking.

## Analysis

### *1. Are the Tenants entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit?*

The Tenants indicated on their application that they seek to suspend or set conditions on the Landlord's right to enter the rental unit as follows:

*CONTINUES TO ENTER OUR PRIVATE SITE WITHOUT PROPER NOTICE.  
HAVE OUTSIDE CAMERA EVIDENCE THAT SUPPORTS THIS.*

Section 29 of the Act describes the conditions under which a landlord may enter a rental unit as follows:

#### **Landlord's right to enter rental unit restricted**

29(1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection

(1) (b).

Section 70(1) of the Act states:

**Director's orders: landlord's right to enter rental unit**

70(1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

For the purposes of interpreting sections 29 and 70(1) of the Act, section 1 of the Act defines “rental unit” as “living accommodation rented or intended to be rented to a tenant”. Section 1 further defines “residential property” to mean:

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels.

In this case, I do not find the Tenants to allege that the Landlord entered or attempted to enter the rental unit without complying with the notice requirements under section 29 of the Act. Section 29 places restrictions on a landlord’s ability to enter the rental unit but does not restrict a landlord’s ability to come onto the rental or residential property as a whole.

I find the Tenants’ concerns relate to the Landlord’s presence on the Tenants’ side of the rental property, outside of the rental unit. As such, I will address this issue under the Tenants’ other claims described below

Based on the foregoing, I decline to grant the Tenants an order under section 70(1) of the Act. The Tenants’ claim under this part is dismissed without leave to re-apply.

*2. Are the Tenants entitled to compensation for monetary loss or money owed by the Landlord?*

The Tenants seek compensation in the amount of \$5,000.00 and state in their application that they suffered monetary loss as follows:

*CONSTANT HARRASMENT INCLUDING PHONE CALLS, ENTERING OUR SITE WITHOUT DUE NOTICE, DESTRUCTION OF PROPERTY, ASSAULT (COURT DATE SET)*

Section 28 of the Act states:

**Protection of tenant's right to quiet enjoyment**

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.

Residential Tenancy Policy Guideline 6 Entitlement to Quiet Enjoyment further states:

**B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

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.

[...]

**Compensation for Damage or Loss**

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). 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.

Regarding claims for compensation, section 67 of the Act states as follows:

**Director's orders: compensation for damage or loss**

67 Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Residential Tenancy Policy Guideline 16. Compensation for Damage or Loss states:

**C. COMPENSATION**

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 order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

In this case, the onus is on the Tenants to prove on a balance of probabilities that compensation is due.

Based on the evidence presented in this application, I am not satisfied that the Tenants have proven that they are entitled to compensation from the Landlord for the following reasons:

- I am not satisfied the Tenants have established on a balance of probabilities that the Landlord engaged in “constant” harassment of the Tenants.

- I find the Tenants have not provided sufficient evidence to substantiate their claim that they were subject to rude gestures, yelling, and screaming from the Landlord “every day” or “almost every day”. I find the Tenants have not provided any details or context as to how this would have occurred, such as specific dates or the circumstances surrounding specific incidents. I find the Tenants have not provided any sample timelines to clearly show the frequency of these incidents over a certain period or to demonstrate a pattern of behaviour on the part of the Landlord. I find this allegation on its own to be too general and vague to result in a finding of breach of quiet enjoyment by the Landlord.
- Furthermore, I find both the Tenants and the Landlord accuse each other of verbal insults and making rude gestures. I accept that the parties may have had many verbal altercations. However, I find there is insufficient evidence to demonstrate that the Landlord was the one who initiated these exchanges without provocation by the Tenants or otherwise acted unreasonably in the circumstances.
- I find the Tenants refer to an incident in which the Landlord called TEF’s workplace to complain about a truck that was parked at the rental property. I note the Landlord’s evidence is that the truck damaged his driveway, so he called TEF’s employer to ask that the truck be left at TEF’s workplace. I find the Tenants did not submit a copy of the letter which they said had been written by TEF’s employer regarding this incident. I find there is insufficient evidence for me to conclude that the Landlord’s call to TEF’s workplace was unreasonable or constituted harassment.
- I find the Tenants refer to two incidents in which the Landlord interrupted the Tenants’ birthday celebrations. I note the Landlord’s explanation is that the Tenants’ guests had parked their vehicles on the Landlord’s grass area and he asked the Tenants to have those vehicles removed. I do not find such a request from the Landlord to be unreasonable. Therefore, I am unable to conclude that the Landlord unreasonably interfered with the Tenants’ quiet enjoyment of the rental unit on these occasions.
- The Tenants stated that the Landlord violated his no-contact order nearly every day, however the Landlord denies this. I note the Landlord’s evidence is that he has been staying with his girlfriend, away from the rental property. I find the versions of events given by the parties to be equally likely. As such, I am unable to conclude on a balance of probabilities that the Landlord breached the no-contact order. I will add

that prior to the issuance of the no-contact order, I would consider it acceptable for the Landlord to go to the Tenants' side of the rental property (outside the rental unit) for reasonable purposes such as collecting rent and delivering notices to the Tenants. In my view, it would also have been reasonable for the Landlord to go to the Tenants' side of the rental property to perform work such as mowing the lawn and maintaining the property. I find that there is insufficient evidence to demonstrate that the Landlord engaged in any unreasonable behaviour while on the Tenants' side of the rental property.

- I find there is insufficient evidence to suggest that the Tenants are entitled to store their belongings in the wellhouse. I find the Tenants have not clearly described any verbal agreement for the Tenants to use the wellhouse. I note the Landlord's evidence is that the wellhouse was never for any tenants to use. Therefore, I am unable to conclude that the Landlord breached the parties' tenancy agreement or the Tenant's right to quiet enjoyment by removing their belongings from the wellhouse and changing the locks.
- I find the evidence suggests that there was an assault charge against TEF, which has been stayed, and an assault charge against the Landlord, which is pending. I note the Landlord's evidence is that he was trying to lock up the wellhouse and that he was attacked by SLF first. I find that given the parties' history, I am unable to conclude that the Landlord was the one at fault in this situation based on the parties' testimonies alone.
- Furthermore, I find the Tenants have not provided a description of their belongings they say the Landlord threw out onto the lawn. I am therefore unable to determine whether such belongings had been damaged by the Landlord, and if so, what the value of that loss might be to the Tenants.

Based on the foregoing, I find the Tenants have not met their onus of proof to establish their entitlement to compensation under section 67 of the Act.

The Tenants' claim for monetary compensation is therefore dismissed without leave to re-apply.

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

Section 62(2) of the Act states that the director "may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a

landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies”.

In their application, the Tenants state that they want the Landlord to comply with the Act as follows:

*WE WON A HARASSMENT CHARGE AND THE LANDLORD HAS  
REPEATEDLY, ALMOST DAILY, DEFIED THE QUIET AND PEACEFUL  
ENJOYMENT OF OUR PROPERTY*

As mentioned above, I have found there is insufficient evidence on this application for me to conclude that the Landlord breached the Tenants’ right to quiet enjoyment of the rental unit.

While I accept that the parties have had various disputes throughout the tenancy, I find there is insufficient evidence to demonstrate that it was the Landlord who caused “substantial interference” with the Tenants’ “ordinary and lawful enjoyment” of the rental unit, or that the actions of the Landlord amount to “[f]requent and ongoing interference or unreasonable disturbances” to the Tenants. I find the evidence suggests that both sides engaged in these arguments and disputes with each other.

Furthermore, as stated above, I do not find the Landlord’s entry onto the Tenants’ side of the rental property to constitute a de facto breach, as there may be circumstances in which it is reasonable for the Landlord to be on the Tenant’s side of the rental property. I have also found there is insufficient evidence to suggest that the Landlord had gone onto the Tenants’ side of the rental property following the no-contact order.

Accordingly, I dismiss the Tenants’ claim under this part, without leave to re-apply.

*4. Are the Tenants entitled to recover the filing fee?*

The Tenants have not been successful in this application. I decline to award the Tenants reimbursement of their filing fee under section 72 of the Act.

Conclusion

The Tenants’ 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: October 19, 2022

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Residential Tenancy Branch