



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

**Dispute Codes:** MNDC

## Introduction

This hearing was convened upon the application of the tenant seeking a monetary order for compensation for loss or damage in the sum of \$200.00 per month for the period “September to the end of construction”.

I am satisfied that the landlord was properly served with the tenant’s application for dispute resolution.

All parties appeared at the date and time set for the hearing and gave evidence under oath.

## Background Summary

The tenant says that the landlord is undertaking renovations and there is daily construction noise and traffic in the building. The tenant says that the work starts around 7 a.m. and continues throughout the day. The tenant says he has just been released from rehabilitation and is not currently working. He stays home during the day and requires his rest and is unable to rest properly due to the ongoing work and noise from hammers, drills, saws, etc. The tenant says the elevator is used by the construction workers to move debris and equipment and is frequently not available for his use. Further the tenant says that the water is contaminated and unavailable at times because of construction to the peoples. he is sometimes unable to use the elevator.

The landlord testified that the building is owned by the BC Government and is part of a program undertaken by the government to purchase and renovate buildings to provide

low income housing. The landlord testified that all tenants were advised of the intent to undertake renovations and a number of tenants decided to vacate during the renovations. The landlord says that this tenant had that option as well but decided to remain. Those tenants who remained can be relocated as required during the renovations and every effort is being made to have a minimal impact on them. The landlord says that the tenants who remain must expect some impact given the extent of the renovations. The landlord testified that a full-time liaison officer has been appointed to work with existing tenants and contractors to ensure that work is done with a minimum of difficulties or interruptions. The landlord testified that the contractor has basically split the building into two, removing all remaining tenants to the other side of the building, blocking the one side off to perform all renovations on that side and then the contractor will move tenants back and complete renovations on the remaining half of the building. The contractor has constructed a wall down the corridor so that there will be minimal traffic between tenants and workers for the safety of all involved. The landlord submitted WCB inspection reports in evidence to demonstrate that the workplace is safe.

The landlord argues that having made that decision the tenant should have been aware that there would be some noise and some disruption but the landlord is doing everything in their power to keep this at a minimum while still allowing tenants to remain at all rather than seeking vacant possession for the renovations.

### **Discussion**

At common law, the covenant of quiet enjoyment “promises that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy. The *Residential Tenancy Act* establishes rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord’s right of entry under the Legislation, and

- use of common areas for reasonable and lawful purposes, free from significant interference.

Every tenancy agreement contains an implied covenant of quiet enjoyment. Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: · entering the rental premises frequently, or without notice or permission; persecution and intimidation; · refusing the tenant access to parts of the rental premises; · preventing the tenant from having guests without cause; · intentionally removing or restricting services, or failing to pay bills so that services are cut off; · forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, · allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

### **Findings**

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. I find that the evidence shows that the tenant had the option to remove himself from this situation and he chose not to do so. I therefore find that he is now estopped from now making a claim for that which he accepted. Further, while these renovations may take time, I find that they are

temporary and therefore do not constitute a basis for a breach of the covenant of quiet enjoyment.

### **Conclusion**

The tenant's application is dismissed.