



# Dispute Resolution Services

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

## Decision

Dispute Codes: MNDC, FF

### Introduction

This hearing dealt with the tenants' application for a Monetary Order for compensation for damage or loss under the Act, regulations or tenancy agreement and recovery of the filing fee. Both parties appeared at the hearing and had an opportunity to be heard and respond to the other party's submissions.

### Issue(s) to be Decided

1. Identity of landlord.
2. Whether the tenants have established that the landlord violated the Act, regulation or tenancy agreement and if so, that the tenants suffered damages which were verified.
3. Award of the filing fee.

### Background and Evidence

Upon hearing undisputed testimony of the parties, I make the following relevant findings. The tenants commenced residency in the rental unit in July 2006; however, in 2008 the tenants had entered into a fixed term tenancy with an expiry of February 2009. The rental unit is located on the upper floor of a house and the basement is rented to other tenants. The landlord does not reside at the residential property. The person appearing as the landlord stated that he manages the rental of the residential property on behalf of his mother who is the owner of the property. From all of the evidence before me it is apparent that the person appearing on behalf of the owner is the person

the tenants deal with in respect to the tenancy and he will be referred to as the landlord herein.

It is not in dispute that on November 9, 2008 the tenants from the basement unit intimidated and threatened to harm one of the tenants making this application while she was home alone. The police were called and attended the scene. A peace bond was issued against the tenant in the basement unit on November 25, 2008 and that the basement unit tenant appeared in court on December 17, 2008 and plead guilty to certain charges with respect to the incident that took place on November 9, 2008. It is not in dispute that the tenant telephoned the landlord after the incident; however, the tenant was informed that the landlord was out of the country. On November 23, 2008 the landlord met with the tenants and the situation was discussed. The parties are in disagreement as to the events that occurred during and after this conversation.

The tenants testified that the landlord assured them that he would take care of the hostile situation by ending the tenancy with the basement unit tenants. However, on December 1, 2008 the tenants learned that the landlord did not serve the basement unit tenants with a Notice to End Tenancy. The tenants testified that the landlord informed the tenants that the landlords feared losing rental income for the month of January 2009 and would not be ending the tenancy of the tenants in the basement unit. The tenants felt unsafe living in the rental unit and could hear the basement unit tenants making loud comments about them so the tenants felt they had no choice but to give the landlord notice that they would be ending their tenancy at the end of December 2008. The tenants paid rent for the full month of December but vacated on December 13, 2008.

The tenants are claiming compensation of \$1,500.00 for moving costs, connection fees and increased rent for two months. The tenants claim that their rent increased to \$1,900.00 per month from \$1,490.00.

The landlord claimed that he spoke to the basement unit tenants on November 23, 2008 and those tenants had complaints about the tenants and that the tenants in both units had made several complaints about each other during the duration of their tenancies. Most of the complaints against the upstairs tenants revolved around loud thumping or slamming doors. The landlord claims that he told the tenants he would have to consult with his mother for advice before issuing a Notice to End Tenancy to the other tenants. The landlord stated that his mother decided not to evict the basement unit tenants upon receiving advice from a lawyer that a landlord can not evict tenants based on allegations from other tenants. The landlord explained that since the peace bond was issued, the landlord did not receive any further complaints from the tenants and assumed the situation had calmed down. The landlord testified that he was waiting to see the outcome of the court case involving the charges against basement unit tenant and even attended the trial.

The landlord felt that the landlord had already been accommodating to the tenants by returning all of their security deposit and permitting the tenants to end their lease before its expiration. Upon enquiry, the landlord stated that the upper unit has not since been re-rented because it is undergoing renovations.

The tenants acknowledged that they had not made any further complaints to the landlord after the peace bond was issued as they had been assured by the landlord that he would be ending the other tenancy. Essentially, the tenants did not see a need to keep complaining to the landlord.

## Analysis

With respect to the identity of the landlord, section 1 of the Act provides, in part, that a

**landlord**, in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

In light of the definition of landlord, I find that the person identified as the landlord by the tenants meets the definition of a landlord under the Act.

The Act provides for the protection of a tenant's right to quiet enjoyment of their rental unit. Section 28 of the Act provides,

### **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: *Right to Quiet Enjoyment* provides additional guidance with respect to a tenant's right to quiet enjoyment. Below, I provide excerpts from the policy guideline I find relevant to this case:

*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:*

- unreasonable and ongoing noise;*
- persecution and intimidation;*

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

*A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.*

*Harassment is defined in the Dictionary of Canadian Law as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome". As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.*

I find that the tenants suffered from harassment and intimidation by the basement unit tenants. I also find that the tenants suffered more than temporary discomfort and

inconvenience and were truly disturbed in a significant way and disturbed repeatedly. I find that the landlord was notified that the harassment and intimidation was taking place and that the landlord had been presented with evidence of its existence by way of the tenants' account of the events which were supported by the issuance of the peace bond by the police. I find that the landlord had an obligation to ensure that the tenants' right to live free from intimidation, harassment, significant interference and disturbance was protected from the actions of the basement unit tenants. The fact that the basement unit tenants complained about the upstairs tenants periodic thumping and door slamming is very pale in comparison to the severity of the harassment that was instigated against the tenants by the basement unit tenants. Therefore, I find the landlord had the ability to take action to greatly improve the tenants' ability to quietly enjoy their rental unit by ending the tenancy with the basement unit tenants yet chose not to do so.

I reject the landlord's position that the landlord needed to wait and see if the basement unit tenant was criminally convicted before deciding whether to end that tenancy as the Act provides that a landlord may end a tenancy for cause under section 47 of the Act. Subsection 47(d) and (e) provide that a landlord may end a tenancy where

- *the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the residential property, or*
- *the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*
  - (i) has caused or is likely to cause damage to the landlord's property,*
  - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or*

*(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*

Had the landlord issued a Notice to End Tenancy to the tenants residing in the basement unit before December 1, 2008, that tenancy would have likely ended December 31, 2008. Had those tenants disputed the Notice, the landlord had evidence that would likely support grounds to end the tenancy, such as the peace bond, the upstairs tenants' testimony and the police report. The test for establishing that the activity was illegal and thus grounds for terminating the tenancy is not the criminal standard which is proof beyond a reasonable doubt. A criminal conviction is not a prerequisite for terminating the tenancy. The standard of proof for ending a tenancy for illegal activity is the same as for ending a tenancy for any cause permitted under the Legislation: proof on a balance of probabilities.

Based on all of the testimony I heard and upon review of the evidence presented to me, I am satisfied that the landlord violated the Act by not taking action to provide the tenants with quiet enjoyment of their unit and that the landlord had the power to take appropriate action that would have very likely restored the quiet enjoyment for the upstairs tenants.

As I have found the landlord in breach of the Act, I must consider whether the tenants have sufficiently established that they suffered damages or loss as a result of the landlord's inadequate response to the situation, and the amount of such loss. Any party that makes a claim for compensation against another party must be able to verify the quantum of the claim. In this case, the tenants did not provide any receipts for their moving costs or connection costs. Nor, did the tenants provide a copy of their new tenancy agreement to demonstrate their increased rental costs. While I do not doubt there are costs associated with moving, I will not speculate on the costs these tenants incurred. What I am certain of from the undisputed testimony of both parties is that the tenants paid a full amount of rent for the month of December 2008 yet they vacated as

soon as possible on December 13, 2008 to get away from the downstairs tenants. Therefore, I find that the tenants have substantiated that they paid rent for 18 days that they did have the benefit of using and my award to the tenants is \$865.16 ( $\$1,490.00 \times 18/31$  days). I also award the tenants the filing fee paid for this application.

The tenants are provided with a Monetary Order in the total amount of \$915.16. The Monetary Order must be served upon the landlord and may be enforced in Provincial Court (Small Claims) as an Order of that court.

Section 45(3) provides that a tenant may end a tenancy early if a landlord has failed to comply with a material term of the tenancy agreement. Since the Act applies to every tenancy agreement and the Act provides for the right to quiet enjoyment, I find that the landlord's failure to ensure the tenants' quiet enjoyment was protected to be a material breach of the tenancy agreement and the tenants were entitled to end the tenancy agreement early due to the severity of this situation. Therefore, the landlord is precluded from bringing forward a future application for dispute resolution for loss of rental revenue against the tenants.

### Conclusion

The tenants were successful in their application, in part, and have been provided a Monetary Order in the amount of \$915.16.

January 27, 2009

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Date of Decision

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Dispute Resolution Officer