

# Dispute Resolution Services

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

## Decision

Dispute Codes: MN, RP, RR, FF

## Introduction

This hearing dealt with an application by the tenants for a monetary order, an order that the landlord perform repairs and an order permitting the tenants to reduce rent until repairs are complete. Both parties participated in the conference call hearing and had opportunity to be heard.

## Issue(s) to be Decided

Are the tenants entitled to compensation for loss of quiet enjoyment?

Should the landlord be ordered to perform repairs?

Should the tenants be permitted to reduce rent until repairs are complete?

## Background and Evidence

The parties agreed that the tenancy began in May 2008. The rental unit is a single-family home in which the tenants occupy the upper floor and have access to the basement, in which is located a laundry room for the tenants' use and storage area which is reserved for the use of the landlord. The tenants also keep a freezer in the basement as well as storing items such as Christmas ornaments. The tenants pay \$950.00 per month in rent. The parties further agreed that on or about November 8, the landlord was at the rental unit collecting the rent when the parties noticed that there was water in the basement. The tenant testified that there was approximately 3" of standing water while the landlord testified that it was a relatively small puddle. On or about November 12, the basement flooded. The tenant testified that the water came up to the bottom of the stairs and that she spent the day extracting the water from the basement. The landlord testified that they called a plumber who cleared sections of the drain tile and explained that there were more sections that had to be unearthed in order to locate the source of the problem. As the landlord did not want to pay the rates charged by the

plumber, the landlord's wife, P., dug up the drain tiles. The parties agreed that P. attended at the rental unit every day to dig. P. discovered cracks in the foundation and on December 2 and December 15 the landlord obtained estimates for repairing the damage using the Krystol system, which could only be applied in above freezing temperatures and in dry weather. The landlord testified that he is waiting to repair the foundation until the weather conditions are agreeable. The landlord testified that he installed a sump pump in the basement. The tenant testified that the pump uses a hose over which she has to step to access the laundry room, creating a safety hazard. The landlord testified that the hose only has to be connected when the sump pump is operating and can be disconnected when it is not.

The tenant argued that for 5 weeks while she was digging outside the house, P. repeatedly asked to use the bathroom and telephone, causing the tenants to lose quiet enjoyment of the rental unit. P. testified that during the first week of digging, she asked to use the bathroom several times a day, but after that, did not make further requests as the tenant had become irritated and repeatedly yelled at her. P. testified that the tenants did not tell her that they were annoyed by her request to use the bathroom and asserted that she would not have made any requests had she known it bothered the tenants.

The tenants testified that the landlord and P. frequently entered the rental unit without notice. The landlord testified that they had only accessed the basement, which they had preserved for their own use. The tenants also alleged that the fact that the landlord had served them with a notice to end tenancy for cause constituted harassment.

The landlord made several requests at the hearing, including asking for orders that the tenant provide keys to the rental unit and vacate the rental unit pursuant to a recent notice to end tenancy. As I do not have an application by the landlord for such orders, these requests have not been addressed in this decision.

### Analysis

The tenant stated several times during the hearing that she no longer cared whether the landlord repaired the rental unit as she intended to vacate the unit at the end of February. Accordingly I consider the claims for an order for repairs and an order

permitting her to reduce rent until repairs were completed to be withdrawn and I will address only the monetary claim.

I note that the tenants suggested that at least part of their claim was for recovery of the value of items which had been damaged by flooding. I have not considered this part of the tenants' claim as they provided no evidence of such damage and no proof of the value of the allegedly damaged items. Further, the tenants are responsible to obtain household insurance; the landlord is not the tenants' insurer.

The covenant of quiet enjoyment includes but is not limited to reasonable privacy, freedom from unreasonable disturbance, exclusive possession and use of common areas free from significant interference. In order to establish a claim for loss of quiet enjoyment, the tenants must prove that there has been frequent and ongoing interference by the landlord. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. The landlord has a responsibility to repair and maintain the rental unit and the reasonable efforts of a landlord to perform required repairs and maintenance cannot form the basis for a claim for loss of quiet enjoyment.

Having reviewed the evidence and testimony of both parties, I find that the tenants have failed to prove that there has been frequent and ongoing interference by the landlord. The fact that a flood occurred does not automatically mean that the tenants have suffered a compensable loss. There is no indication in this case that the flood occurred as a result of the landlord's negligence. Given the restrictions placed on them by the weather, I find that the landlord acted reasonably in addressing the flooding problems and find in any event, that it had minimal impact on the tenants. While the tenants spent time extracting water from the basement, there is no suggestion that they gave the landlord the opportunity to perform this task. The tenants were not permitted to use the basement other than to use the laundry room, and I find that the connection of the hose for the sump pump did not constitute a significant interference. Although the landlord spent considerable time outside at the rental unit as well as in the basement, I find that the tenants have not proven significant interference with that part of the rental unit over which the tenants were to have exclusive possession. The tenants do not have exclusive possession of the basement, so the landlord may access the basement

without notice.

While P. may have initially asked to use the washroom several times a day, I am not satisfied that the tenants told her that her request was unwelcome until the point at which the tenants started becoming angry. Given her demeanour at the hearing, I am convinced that P. would not have continued making this request had she known that the tenants found it offensive. It is possible that other entry without notice took place while the parties were still on good terms, but it is clear that after the relationship between them broke down, the landlord and P. made every effort to stay out of the tenants' way.

I find that the landlord has not harassed the tenants. The serving of a notice to end tenancy for cause cannot be considered harassment unless the landlord continually serves notices without any grounds to do so.

### Conclusion

The tenants have failed to prove that the landlord has breached the covenant of quiet enjoyment and accordingly I dismiss the tenants' claim.

Dated January 21, 2009.