

# Dispute Resolution Services

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

## Decision

Dispute Codes: MN, RP

## Introduction

This hearing dealt with an application by the tenant for an order that the landlord perform repairs and a monetary order. Both parties participated in the hearing and had opportunity to be heard.

## Issue(s) to be Decided

Should the landlord be ordered to install Venetian blinds in the rental unit?

Is the tenant entitled to a monetary order as claimed?

## Background and Evidence

The tenancy began in 1988. The rental unit is on the third floor of a multi-storey apartment building. During the tenancy the building was discovered to have building envelope failure requiring remediation. The remediation began at the end of May 2005 and ended at the end of December 2006 although there were deficiency inspections which took place after the remediation was completed which were related to the builders lien holdback.

The tenant claims that she experienced a loss of quiet enjoyment of the rental unit during the time the construction took place. The tenant testified that excessive noise from the construction crews occurred every weekday starting as early as 7:30 and lasting until 4:30. The tenant presented a witness who lives nearby who confirmed that the noise was loud throughout the construction period. The witness confirmed that he did not complain about the noise during the period of construction. The tenant claimed that the construction lasted for 22 months and testified that her home was barely livable during that time because of the dust and noise. The tenant further testified that the construction workers had to enter her suite more than 30 times during the construction period. The tenant provided copies of several notices of entry and claimed that many of

the entries by construction workers occurred with no written notice having been given. The tenant further testified that on one occasion, a construction worker was rude to her and yelled at her. The tenant's witness testified that he witnessed the incident with the construction worker. The tenant seeks \$100.00 per month in compensation for 22 months of loss of quiet enjoyment. The tenant testified that in July 2005 she was told that she could no longer use her balcony as the railing was being removed and was not able to use her balcony again until the landlord removed dirt and debris from the track of the sliding glass door some 26 months later. The tenant gave no evidence showing that she requested that the landlord clean the sliding door track earlier than the summer of 2007. The tenant testified that she pays \$367.00 per month in rent and estimated the value of the balcony at \$100.00 per month, which she seeks to recover for the 26 months she claims she was unable to use the balcony. The tenant further testified that for a two-week period her cablevision and two outlets in her living room were disconnected. The tenant testified that she pays approximately \$30.00 per month for cablevision. The tenant seeks \$100.00 in compensation for the two-week period in which she was unable to use the outlets and access the cablevision for which she paid.

The landlord testified that during the period of the construction the tenant made no complaints about noise, dust or problems with the workers. The landlord testified that the Society runs a number of buildings and are open to transferring tenants who experience problems in their rental units. The landlord provided evidence that in the past, this tenant was offered a transfer when she had other complaints and a similar offer would have been extended had the landlord known that she found the noise problematic. The landlord provided evidence of complaints the tenant had made throughout the tenancy, showing that the tenant was aware of the complaint procedure and had used the procedure on many occasions and had even gone as far as telephoning the CEO of the Society on one occasion. The landlord objected to the tenant having waited until November 2008, almost two years from the end of the construction period, to make her claim. The landlord testified that because of the delay, documents relating to the construction were unavailable as they had been archived and the memories of those who had been directly involved with the construction process had faded, making it difficult to prepare a defence. Contractors' notes were also unavailable because of the lengthy delay. The landlord testified that while construction began in

May 2005, the work was done in phases. The landlord testified that work did not begin on the West side of the building where the rental unit is located until July 2005, at which time scaffolding was erected. The landlord provided evidence from the engineering firm overseeing the project which indicated that the scaffolding was erected in July 2005 and dismantled in August 2006. The landlord testified that the tenant was unable to use her balcony for approximately 13 months and asserted that if the tenant had complained that she was unable to open the balcony door after August 2006 when the use of the balcony had been restored, the landlord would have acted immediately to ensure the door could be opened. The landlord testified that there was a rooftop balcony available during the entire construction period, which was provided to accommodate tenants who were unable to use their balconies. With respect to the time in which the tenant did not have use of cablevision or two of the outlets in the living room, the landlord provided evidence that the tenant had been given legal notice of entry to restore those services and the landlord could not enter on the date specified in the notice as the tenant had installed a chain lock in the rental unit and the lock was engaged. The landlord argued that the tenant caused the delay in the restoration of services.

The tenant also seeks an order that the landlord be required to install Venetian blinds in the rental unit. The parties agreed that at the beginning of the tenancy, there were blinds on the windows of the rental unit. In 2005 the blinds were removed from the rental unit in preparation for construction. The tenant testified that although the landlord has offered to install drapes, she does not feel that drapes will sufficiently block out the outside light. The tenant also expressed concerns that she would be unable to remove and re-hang the drapes when they required cleaning. The tenant testified that she had been told that 30 – 35% of the units in the buildings had blinds installed. Since 2005 the tenant has not had window coverings other than tinfoil which she has been asked by the landlord to remove.

The landlord testified that as the Society operates on a limited budget, a decision was made to replace all blinds in their buildings with drapes. The landlord described a double-rod system which would permit tenants to install a second drape inside the drapes provided by the landlord, permitting the tenants to use colours which matched their décor or use blackout drapes if those were required. Although the double-rod

system was more expensive than a single-rod system, the Society chose to use the double-rod to satisfy the Society's desire for a uniform appearance on the outside of the building while still permitting tenants to stylistically express themselves with an optional interior drape. The landlord testified that blinds had a very short life while drapes could last up to 20 years. The landlord acknowledged that some tenants had Venetian blinds in their suites, but testified that those tenants had purchased the blinds themselves as the landlord no longer provided blinds in any of its buildings. The landlord presented evidence showing that starting in 2004 several attempts were made to install drapes in the rental unit. This evidence included a request by the tenant to have the drapes installed. The landlord testified that the Society would be happy to assist in removing and re-hanging the drapes when they required cleaning. The tenant expressed doubt that this offer would be fulfilled when required.

### Analysis

Having reviewed the testimony and evidence of the parties, it is my finding that the tenant's claim for loss of quiet enjoyment should be barred by her failure to advance it in a timely way. The tenant has made applications for dispute resolution in the past and was well aware of the remedy available to her, but chose to do nothing for two years. As a result of the delay, the landlord was prejudiced in that it was limited in the evidence it could produce to defend the claim as documents were no longer available and the memories of the parties involved had faded. I find that the doctrine of laches should be applied to bar this claim. This is a legal doctrine based on the maxim that equity aids the vigilant and not those who slumber on their rights. I find that the tenant's inordinate delay in asserting this claim and the manifest prejudice to the landlord that has resulted from her failure to make a timely objection warrants the denial of this claim.

However, even if I were wrong in my application of the doctrine of laches, I would have denied the claim in any event. Section 28 of the Act provides that the tenant is entitled to quiet enjoyment which includes *reasonable* privacy, freedom from *unreasonable* disturbance, exclusive possession and use of common areas free from significant interference. The tenant bears the burden of proving that any disturbance or loss of privacy was unreasonable. I find that the tenant has not proven any loss of privacy or loss of exclusive possession. I find that while there was some disturbance from

construction noise and dust, the disturbance was reasonable in the circumstances. The landlord bore the obligation to remediate as the result of the building envelope failure could have resulted not only in severe economic loss but also potential exposure of the tenants to high levels of moulds and other toxins. It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and obligation to maintain the premises. In this instance, the construction took place during daytime hours on weekdays and I am satisfied on the evidence that the construction on the West side of the building where the rental unit is located took place during July 2005 – August 2006 when the scaffolding was in place on the West side. I am satisfied that the landlord made every effort to minimize the disruption to the tenant.

I further note that the tenant made no complaints to the landlord while the construction was underway, thereby depriving the landlord of the opportunity to address the tenant's complaints and find a solution, which may have included a transfer to a quieter building. Not only did the tenant not complain about the noise and dust, but she did not complain when a construction worker allegedly yelled at her. The landlord could not have been expected to deal with a worker's inappropriate behaviour when there was no knowledge of that behaviour. I am satisfied that the tenant was well aware of the complaint procedure and had used it both before and after the construction to either complain or request repairs and find that the tenant's failure to complain during the construction period prejudiced the landlord. The tenant's claim for loss of quiet enjoyment is dismissed.

As the landlord made an alternative balcony available to the tenant from May 2005 – August 2006, that period of time in which her balcony was inaccessible, I find that the tenant is not entitled to compensation for use of her balcony. Although the tenant claims that her own balcony was not available to her until 2007, there is no evidence showing that she made any request to the landlord to have the sliding door track cleaned or repaired in August 2006. The tenant cannot deprive the landlord of the opportunity to perform repairs and then make a claim for compensation for loss resulting from unperformed repairs. The tenant's claim for loss of use of her balcony is dismissed.

With respect to the loss of cablevision and electrical outlets for a two-week period, I find

that the loss of services for a short period of time for the purposes of remediation is not unreasonable. I find that the reason the loss of services lasted for a full two weeks was because the tenant refused access to the landlord despite having been given a legal notice of entry. I have found that access was refused because the tenant was clearly inside the rental unit as the security chain could not have been engaged from outside the rental unit. As the landlord attempted to restore services within a reasonable period of time, I dismiss the tenant's claim for compensation for loss of those services.

As for the tenant's claim for an order that the landlord install Venetian blinds, it is clear that the landlord is obliged to provide window coverings as the windows were covered at the beginning of the tenancy. However, I find that there is no obligation under the Act for the landlord to provide exactly the same window coverings as were in place at the outset of the tenancy. I find that the drapes offered by the landlord are sufficient to discharge the landlord's obligation to provide window coverings and I dismiss this part of the tenant's claim

### Conclusion

The tenant's claim is dismissed in its entirety.

Dated February 27, 2009.