

## Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

### DECISION

**Dispute Codes:** CNR, MNDC

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed evidence and this Hearing proceeded on its merits.

### **Issue(s) to be Decided**

This is the Tenant’s application under Sections 46(4) and 67 to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and for a monetary order for compensation for damage or loss.

### **Background and evidence**

#### **Tenant’s evidence and testimony**

- The Tenant stated that he is in arrears of rent in the amount of \$1,085.00, plus some parking and late fees.
- The Tenant requested a monetary order for damages for loss of peaceful enjoyment. He stated that he has had difficulty sleeping and finds the noise in the building intolerable due to noisy tenants and a poorly constructed building. The Tenant stated that there is no sound dampening in walls and ceilings of the rental property.

- The Tenant stated that he had been subjected to noise from tenants in the suite below him for 4 months and asked the Landlord to do something. The Landlord requested that he provide a written complaint to the Landlord, which he did. Shortly thereafter, the tenants were evicted. The Tenant stated that the tenants that moved in three months ago to take their place make even more noise. The Tenant testified that he has asked the downstairs tenants to be more quiet and their response was to laugh at him. The Tenant stated that he has phoned the Landlord 10 times over the past three months to do something about the downstairs tenants. The Tenant stated that he offered to have the Landlord attend at his rental unit to see for himself how loud the noise was, but the Landlord has not done so. The Tenant stated that between midnight and 5 a.m. on March 24, 2009, there was banging and loud talking coming from the suite below him.
- The Tenant asked for compensation for loss of services under the Tenancy Agreement. The Tenant testified that he did not have hot water in his shower for six weeks. The Tenant stated that he advised the Landlord about the problem and asked him to have it repaired, but nothing was done for six weeks. The Tenant testified that for three weeks of that time period, he was out of town.
- The Tenant asked to be reimbursed for bank charges stemming out of the Landlord's error in collecting double rent for the months of October and November, 2008. The Tenant testified that he had prepaid Landlord for six month's rent in the amount of \$4,800.00. The Tenant testified that the Landlord requested that he sign an electronic debit card, so that when the six months was up his rent would be debited directly from his bank account. The Tenant stated that he did not want to sign the document, but did so anyway. He stated that when the six months was up, on September 30, 2008, he provided the Landlord with a money order for October's rent in the amount of \$800.00. The Tenant testified that a further \$800.00 was debited from his account for October rent, which caused him to be overdrawn and the bank charged him \$42.50 in service fees. The Tenant went to the Landlord's office and complained about the double rent charge, and the Landlord refunded the Tenant \$800.00 on October 2<sup>nd</sup> or 3<sup>rd</sup>,

2008. The Tenant stated that he advised the Landlord that he would be providing money orders or bank drafts for his rent in the future and asked them to cancel the automatic withdrawal from his bank account. The Tenant stated that on October 30, 2008, he provided the Landlord with his rent, minus \$100.00 for not having any hot water for 6 weeks. The Tenant testified that on November 1<sup>st</sup>, his account was debited again for \$800.00, putting him in overdraft again and causing another \$42.50 in bank fees.

#### Landlord's evidence and testimony

- The Landlord asked for an order of possession for nonpayment of rent.
- The Landlord agreed that there had been a problem with the previous tenants in the downstairs rental unit, but that he had evicted them. The Landlord stated that it is an old building and the sound proofing is lacking. The Landlord stated that he spoke to the new downstairs tenants and asked them to be quiet between the hours of 11:00 p.m. and 8:00 a.m. The Landlord stated that he did not attend at the Tenant's suite to monitor the noise level, at the Tenant's invitation, because he was too busy on that occasion. The Landlord stated that he had done so 5 minutes before the hearing and that there was no noise.
- The Landlord stated that the maintenance person for the building takes care of three buildings. The Landlord testified that he attempted to arrange a time for the maintenance man to fix the hot water in the shower when the Tenant would be in the rental unit, but that it was difficult because the Tenant wanted the maintenance man to come on a weekend. The Landlord stated that when the maintenance man did go to repair the hot water in the shower, there appeared to be no hot water problem, but that the maintenance man did repair a leak in the shower.
- The Landlord agreed that there was a double rent payment made in October, but that the Landlord had reimbursed the Tenant immediately upon realizing the double payment had been made. The Landlord stated that there was not enough time to cancel the electronic debit for November's rent.

### **Analysis and Decision**

This is the Tenant's application and I make no orders with respect to the Landlord's claim for unpaid rent. At this Hearing, I am considering only the Tenant's claims as set out in his application. The Landlord is at liberty to make his own application for rent arrears.

The Tenant agreed that he is in arrears of rent. The Tenant did not pay the rent arrears within 5 days of receiving the Notice to End Tenancy, and therefore the Landlord is entitled to an order of possession and I make that order.

With respect to the Tenant's claim for compensation for loss of peaceful enjoyment of the rental unit, I award the Tenant \$250.00, or approximately \$25.00 per occurrence. I arrived at this figure by dividing the Tenant's rent of \$800.00 by 30 to get an approximate daily rate, and then multiplied that figure by the number of times the Tenant called the Landlord. The Tenant did not provide the Landlord with a written complaint regarding the new downstairs tenants. However, the Tenant did attempt to resolve the issue with the downstairs tenants, and when that failed, he made 10 telephone calls to the Landlord to complain. The Landlord asked the downstairs tenants to be mindful of the noise, but did not attempt to determine if noises were occurring in the evening which would disrupt the Tenant's sleep. Regardless of the age of the building, or the amount of soundproofing in the building, the Landlord has an obligation to provide tenants with freedom from unreasonable disturbance.

With respect to the Tenant's claim for compensation for loss of hot water in his shower, I award the Tenant \$5.00 a day for the number of days he was without a shower. The Tenant testified that he was away for 3 of the 6 week period, and therefore I award the Tenant \$105.00.

With respect to the Tenant's request to be reimbursed for his bank charges in the amount of \$85.00, I dismiss this part of the Tenant's claim. The Tenant signed an electronic debit form. If the Tenant does not wish the rent payments to come directly from his account, the Tenant must authorize his bank to stop the automatic payment. This procedure can take a few weeks.

The Tenant is entitled to a monetary order in the amount of \$355.00, calculated as follows:

For loss of peaceful enjoyment	\$250.00
For loss of hot water	<u>\$105.00</u>
TOTAL	<u>\$355.00</u>
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### **Conclusion**

I grant the Tenant a monetary order under section 67 of the Act for \$355.00. This order must be served on the Landlord and may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an order of that Court.

Under section 55 of the Act, and based on the above facts I find that the Landlord is entitled to an Order of Possession and I hereby issue the order effective two days from service of the order. This order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

March 25, 2009

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