

DECISION

This hearing was convened in response to an application filed by the tenant seeking from the landlord, money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Specifically, the tenant is seeking compensation for loss of quiet enjoyment of the rental unit in the amount of \$3150 (3 x monthly rent of \$1050)

Both parties participated in the hearing and provided submissions as well as solemnly affirmed testimony.

The tenancy started October 1, 2008, and ended March 31, 2008. Rent was in the amount of \$1050 per month.

The tenant claims that she and her co-tenant moved into a rental unit in the midst of heavy construction almost directly outside their rental unit near a major and busy intersection of the urban core. The construction was related to Canada Line and Cambie Corridor implementation of the RAV line scheduled to be operational in late 2009. The tenant's claim that prior to moving into the rental unit they were concerned about the noise of the construction and relied on the information of the landlord that the noise would end at the "end of fall" soon after they moved in, and on this basis agreed to the tenancy . The noise did not abate and according to the tenant, became "extreme" affording them little quiet and interfering with their rest. They also learned that construction in the vicinity would not be ending until much later, contrary to what they claim they were lead to believe by the landlord. The tenant provided a signed statement by her co-tenant essentially confirming what the tenant stated: "the landlord assured both myself and ____ that the construction taking place opposite the property was to be finished by the end of fall 2008".

The landlord denies they have ever said anything to the tenant about the obvious construction outside the rental unit, saying they have never been in a position to assure anyone as to when this construction would end, or what the construction schedule would be. The landlord does not recall giving the tenant any assurances as are claimed. However, the landlord also stated, in their testimony and in their submission, that the construction is a very large project and it is public knowledge as to its presence and

eventual completion by the end of 2009. Their testimony is that the tenants ought to have known, or should have known this situation before entering into the tenancy. The landlord also claims they first heard of the tenant's concerns of excessive noise from construction no earlier than February 13th. 2009, just before the tenant filed for Dispute Resolution on February 16, 2009; therefore, the landlord was unable to resolve this matter to any satisfaction.

In this matter the burden of proving loss and damage rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss due to the landlord's neglect, or failure to comply with the Act. And, if so established, did the claimant (tenant) take reasonable steps to mitigate or minimize the loss?

On the preponderance of the evidence I find the tenant has not met their burden of proof. It is not apparent, and the tenant has not proven the tenant's loss was due to the landlord's neglect or failure in complying with the Act, Regulation or the Tenancy Agreement. According to the tenant, they chose to rely on the assurance of the landlord without benefit of due diligence by seeking out their own 'independent' information prior to entering the tenancy.

I dismiss the tenant's application without leave to reapply. However, if after reflection the landlord determines they have other than a legal obligation to this tenant, they may choose to advise the tenant directly.

Dated April 28, 2009.