

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

This application, brought by the tenant seeking a Monetary Order for loss of quiet enjoyment of her rental unit for a period of two months during which renovations were underway in neighbouring suites in the rental building.

This dispute was originally set for hearing on December 1, 2009, but the tenant's application was dismissed with leave to reapply when neither party appeared at the hearing. The tenant subsequently applied for a Review Hearing but the application was denied by a decision rendered on December 21, 2009, following which the tenant brought the present application by leave granted in the original decision.

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

This matter again requires a decision on whether the tenant is entitled to a Monetary Order for loss of quiet enjoyment and in what amount.

### **Background and Evidence**

This tenancy began in May of 1999 and ended on September 30, 2009. Rent was \$530 per month at the end of the tenancy.

During the hearing, the tenant gave evidence that the tenancy had ended pursuant to a Notice to End Tenancy for landlord use served on July 21, 2009 and setting an end of

tenancy date at September 30, 2009. As provided for under section 51 of the *Act*, the tenant was given free rent for September, and had gained the right under section 50 of the *Act* to end the tenancy with 10 days notice.

The tenant and her advocates gave evidence that for the final two months of the tenancy, her quiet enjoyment had been greatly diminished by the noise, odors and dust from the renovations for up to 10 hours per day. The tenant stated that in one incident, she was nearly struck by a falling piece of flashing while standing on her balcony. She stated that she was 88 years of age and was unable to get out during the day to get a break from the disturbances.

Therefore, the tenant seeks return of all the rent she paid for August 2009 plus compensation for the loss of the full value of the benefit of free rent bestowed on her by section 51 of the *Act*, \$1,060 in total.

The landlord's agent conceded that he was not in the building during the material times, but that renovation work had only been carried out in five of the nineteen units in the building and those had taken only two to three days each. He said that the renovators had been instructed to work from 9 a.m. to 5 p.m. and had been asked to be mindful of the residents remaining in the building.

## **Analysis**

Section 7 of the *Act* provides that if either party to a rental agreement suffers a loss due to non-compliance by the other with the legislation or rental agreement, the non-compliant party must compensate the other.

The right to quiet enjoyment is codified at section 28 of the *Act* and includes the right to freedom from unreasonable disturbance.

In this matter, I find there was some diminishment of the tenant's quiet enjoyment but the greater question is whether the disturbance was "unreasonable" and the matter of degree and fair compensation.

I find that the tenant is not entitled to full return of her rent for August and the value of the free rent she was granted for September. The parties disagree as to whether the disturbance continued for 15 days or for most of the two months including some Saturdays and the tenant adds that odors and dust continued whether work was ongoing or not.

On the other hand, the tenant had full use of the rental unit throughout for shelter, sleeping, cooking, washing and other amenities. The work, while it was being conducted nearby, was not carried out in her rental unit and I must deduce that the odors and dust that could enter the rental unit could be controlled, in part, by the tenant's use of doors and windows.

Residential Policy Guideline 6 instructs, in part, that:

"It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

On balance, I find that the tenant's quiet enjoyment of the rental unit was diminished to a degree that warrants compensation of \$100 in total.

**Conclusion**

The tenant's copy of this decision is accompanied by a Monetary Order for \$100, enforceable through the Provincial Court of British Columbia, for service on the landlord.

April 8, 2010