



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      MNDC, MNSD, ERP, RP, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order, an order for the return of her security deposit and an order that the landlord perform repairs. Both parties participated in the conference call hearing.

At the hearing the parties advised that the tenant had vacated the rental unit. As the tenant is no longer in the rental unit, I consider the claim for an order that the landlord perform repairs to have been withdrawn.

### Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

Is the tenant entitled to the return of her security deposit?

### Background and Evidence

The parties agreed that the tenancy began in January 2010 and ended on July 31, 2010 pursuant to a mutual agreement to end tenancy which took effect on that date. The tenant paid a \$300.00 security deposit at the outset of the tenancy.

The tenant testified that in January she complained to the landlord that she was hearing loud noises which she thought was coming from the commercial unit below the rental unit. The tenant testified that the landlord went on the roof to do something and that the noise went away until sometime in May or June, at which time it returned. The tenant again complained and the landlord attended the rental unit. The landlord insisted he

could not hear the noise, despite having pressed his ear to the wall at the tenant's insistence. The tenant testified that she had been told by a roofer that the cause of the noise was a fan on the roof directly above the rental unit. The landlord testified that there is no fan directly above the rental unit. The tenant's brother, who lives next door to the rental unit, testified that he experiences some noise but that the noise in the rental unit was significantly louder in the rental unit than it was in his unit.

The tenant testified that the landlord refused to find the source of the noise and repair it and that the noise disturbed her continually for the last two months of her tenancy. The tenant further testified that she had to move because of the landlord's failure to perform repairs. The tenant seeks the return of the rent she paid for June and July as well as her moving costs.

The landlord testified that he was unable to hear the noise the tenant complained of. He stated that there was no fan directly above the rental unit and that none of the other tenants in the building complained of noise.

The tenant testified that other tenants in the building had window coverings included with their units but that she did not. The tenancy agreement indicates that window coverings are not included. The landlord testified that window coverings were offered to the tenant, but she refused. The tenant seeks \$125.00 as the cost of purchasing window coverings.

The tenant testified that while most tenants were paying \$575.00 per month in rent, she was paying an additional \$10.00 per month in rent because she was paying for covered parking with video surveillance. The tenant testified that the video surveillance has never worked and that she was not assigned a spot in the covered area. The landlord testified that the tenant's rent is \$585.00 because her unit is unique from other units and because the other tenants had begun occupancy at a time when rents were lower. The landlord testified that the tenant was given an assigned parking spot in the covered area but used it for just 2 months until her car was broken into, after which she chose to park in the uncovered area. The landlord denied having accepted any additional monies

from the tenant for covered parking and insisted that the assigned parking space was given as a courtesy. The tenant seeks to recover the \$10.00 per month she paid for covered parking over a 6 month period.

The tenant seeks an order for the return of her security deposit. The tenancy ended on July 31 and the landlord acknowledged having received the forwarding address on that date.

### Analysis

The tenant bears the burden of proving her claim on the balance of probabilities. In order to establish a claim for loss of quiet enjoyment during June and July due to excessive noise, the tenant must prove that there existed noise which was within the landlord's control and that it was excessive. The tenant and her brother both described whining and thumping sounds which would occur at different times. While both the tenant and her brother testified that the noise was excessive, the tenant acknowledged that the landlord could not hear the noise while he was in the rental unit and that she encouraged him to press his ear to the wall to enable him to hear the noise more clearly. The tenant alternately blamed the noise on a fan which she believed to be directly above the rental unit or on the commercial space below, over which the landlord has no control. I am not persuaded that there is a fan above the rental unit and I further am not persuaded that the noise was as loud or as constant as described by the tenant. I find that the tenant has not proven that there existed noises which were excessive to the degree that compensation is warranted or that the source of any noise was in the control of the landlord. For this reason I dismiss the tenant's claim for recovery of her rent for June and July and for her moving costs.

The tenancy agreement indicates that window coverings are not included in the tenancy agreement. Regardless of whether other parties in the building were given window coverings, the tenant chose to enter into an agreement whereby the landlord was obligated to provide window coverings. In the absence of such an obligation I dismiss the claim for the cost of window coverings.

The tenant's claim for parking is dismissed for the same reason. I am not persuaded that \$10.00 of the rent was specifically for payment of a space in the covered parking area as there is no breakdown indicating this in the tenancy agreement. The claim for the return of parking monies is dismissed.

The claim for the return of the security deposit is premature. Under section 38 of the Act, the landlord has 15 days from the end of the tenancy and the date the forwarding address is received in writing in which to return the deposit or make a claim against it. As the parties agreed that the tenancy ended and the forwarding address was given on July 31, the landlord has until August 15 to deal with the deposit. The claim for the return of the security deposit is dismissed with leave to reapply.

The tenant seeks recovery of the cost of sending documents to the landlord via registered mail. Under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee. I find that as the tenant has been unsuccessful in her claim, she must bear the cost of the filing fee. The claim for recovery of registered mail costs and the filing fee is dismissed.

### Conclusion

The claim for the return of the security deposit is dismissed with leave to reapply. The remainder of the claim is dismissed without leave to reapply.

Dated: August 10, 2010

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Dispute Resolution Officer