



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes** MNDC, OLC, ERP, PSF

### **Introduction**

This hearing was convened by way of conference call to deal with the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord provide services or facilities required by law.

The landlord was represented by an agent, being the landlord's son. The agent testified that his father is 88 years old and has Alzheimer's disease. The tenant also attended the hearing. Both parties gave affirmed testimony and were given the opportunity to cross examine each other on their evidence. All information and evidence provided has been reviewed and is considered in this Decision.

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

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order that the landlord make emergency repairs for health or safety reasons?

Is the tenant entitled to an order that the landlord provide services or facilities required by law?

### **Background and Evidence**

This tenancy began as a fixed term tenancy on April 1, 2008 which expired on March 31, 2009 and then reverted to a month-to-month tenancy. The tenant still resides in the rental unit. Rent in the amount of \$700.00 is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears. In March, 2008 the landlord collected a security deposit from the tenant in the amount of \$300.00.

The tenant testified that she complained to the landlord and called the police 12 times with respect to noise in the building.

She also stated that she has no control over the heat and asked the landlord for access to the thermostat, to which he replied that the heating bills were too expensive and refused her access. She stated she uses space heaters and pays for the electricity. Heat is to be included in the rent. She stated that the difference in her power bill is about \$20.00 per month.

During 2 winters there were large leaks in the ceiling; she put out pots to catch the drips, and missed 2 full months of work due to asthma from the mould build-up on the ceiling. Her doctor sent her to a respiratory therapist. The roof was repaired but the tenant was left to clean the debris left behind. She also testified that she tried to repair a hole in the bathroom wall and the ceiling with plaster, and claims \$75.00. Further, there is little water pressure in the taps and a lot of silverfish in cupboards and her clothing. She spoke to the landlord who said he couldn't do anything about it.

The tenant also testified that the fridge broke last summer, and when she called the landlord he yelled at her. The fridge did get fixed, but broke again. She has not moved from the unit because she has invested money into the rental unit; she rented a sander and re-finished the hardwood floors and painted the entire unit. She also installed a new bathroom floor and replaced some caulking. She stated that the unit now looks good. Although she feels she cannot claim for all of that, she is claiming \$13,155.00 in damages for noise from other tenants, lack of adequate heat, mould, bugs and the

plumbing issues. She stated that instead of responding satisfactorily to her complaints, the landlord is abusive.

The landlord's agent testified that on October 1, 2010 he told other tenants that if the noise continues, they will be evicted, and cannot do anything more than that with respect to the tenant's complaints about the noise. Further, no other tenants have complained about heat or noise.

He further testified that he now has Power of Attorney for his father due to his health issues, and the building is now for sale.

### **Analysis**

I accept the evidence of the tenant that she completed certain repairs to the unit to make it a more comfortable home, however I also find that the tenant's claim for \$13,155.00 is excessive in the circumstances. In order to be successful, the onus is on the tenant to prove that the tenancy has been devalued, and then assist me in the determination of the amount by which the tenancy has been devalued.

The tenant testified that the difference in her power bill by the usage of electric heaters is about \$20.00 per month during the winter months. For the period of the tenancy, using that figure which is undisputed by the landlord's agent, I find that the tenant ought to recover \$200.00.

With respect to the landlord's failure to deal with the roofing issue and the tenant's testimony that she missed 2 months of work due to asthma caused by the mould, I find that the tenancy was devalued by the landlord's failure to comply with Section 32 of the *Residential Tenancy Act*. The tenant has requested \$300.00 compensation for the leaks and repairs, being \$50.00 per month for November, 2008 to April 2009 and November, 2009 to January, 2010, as well as \$1,500.00 for the mould. I find that the tenant has failed to establish that the mould devalued the tenancy by \$300.00 per month but I am satisfied that the repairs and the mould issue combined has devalued the tenancy by \$450.00, being \$50.00 per month. I also accept the tenant's evidence

with respect to the clock radio that was damaged by the leaks, and I allow that cost at \$72.84.

With respect to the repairs the tenant completed herself, and her claim of \$75.00 for those repairs, I refer to Section 33 of the *Residential Tenancy Act*, which specifies that the tenant may have emergency repairs made if they are needed, the tenant has made at least 2 attempts to contact the landlord, and gave the landlord reasonable time to make those repairs. The tenant has supplied letters to the landlord that all deal with noise, not with requests for emergency repairs.

The tenant has also claimed \$15.00 per month for the entire tenancy for silverfish and ants, but provided evidence that she first spoke to the landlord about the problem last summer. I accept the tenant's claim for \$15.00 per month for the months of July, 2009 to October, 2010, for a total of \$240.00. The tenant testified that the landlord yelled at her twice after her request to rid the unit of bugs, and I accept her claim for \$30.00 for bug killer.

I also find that the tenant has failed to establish that the tenancy has been devalued by \$15.00 per month for the entire tenancy for insufficient water pressure. There is no evidence before me that the tenant requested repairs in writing or that she complained to the landlord about that issue at all.

With respect to the tenant's claim for loss of quiet enjoyment, I have reviewed the journal notes, letters and the tenant's "Request for a Monetary Order," and I find that the tenant has failed to explain why she feels the tenancy was devalued by \$300.00 per month for 2008 to 2009; \$400.00 per month for 2009 to 2010; and \$700.00 for September to October, 2010. The tenant kept copious notes about the noise and calls to the police about the noise and spoke to the landlord about it sometime between November 14 and November 19, 2009. The tenant then put it in writing in May, 2010. She provided 11 police file numbers from November, 2009 to October 2, 2010 and testified that the police were also called in February, 2009. I find that the tenant has failed to establish any other time period for which I could hold the landlord responsible.

The tenant provided testimony that she could not sleep at night due to noise, provided evidence that she slept at homes of friends, and provided a letter from her employer describing sleep deprivation and requesting assistance from the landlord. I find that the tenancy has been consistently devalued due to loss of quiet enjoyment by 30% of the rent paid, or \$210.00 per month for the last 12 months, or \$2,520.00.

### **Conclusion**

For the reasons set out above, I find that the tenant has established a claim for \$3,512.84 and I grant an order in favor of the tenant for that amount. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.

I further order that the landlord comply with the *Act* by:

- Providing and maintaining residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and makes it suitable for occupation by a tenant;
- Taking immediate action to rid the rental unit of silverfish, ants and other bugs;
- Completing emergency repairs in a timely manner;
- Allowing the tenant access to the heat/thermostat if she so requests;
- Providing the tenant with her right to quiet enjoyment, free from noise after 11:00 p.m.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 29, 2010.

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Dispute Resolution Officer