

## **DECISION**

Dispute Codes      MNSD, LAT, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order compensation for damage or loss, to authorize the tenants to change the locks and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act.

### Summary of Background and Evidence

This tenancy started in July 15, 2010 with rent of \$1,300.00, the tenants paid a security deposit of \$650.00 and a pet damage deposit of \$650.00.

The tenants testified that their peace and quiet enjoyment was continually compromised due to construction noise in September 2010. The tenants stated that the landlord had continually come on to the property without providing notice per the Act and that the landlord's request to complete an inspection with a UV light was very intrusive and harassing.

The tenants testified that on September 22 and 23 the landlord was in the back yard without giving the tenants 24 hours notice and that on one occasion the tenant's dog was blocked on their deck and the landlord's dogs were loose in the yard. The tenants stated that the landlord and his contractors often parked on the portion of the driveway that is designated for the upstairs tenants use only and that during construction of a 3<sup>rd</sup> suite in the residence, the landlord continually called the tenants on the phone.

The tenants stated that where to park their RV had become an issue but that the RV had been discussed with the landlord prior to moving in. The tenants stated that they felt very threatened and harassed by the landlord's request to use a UV light for inspection of their rental unit.

The tenants testified that construction of a 3<sup>rd</sup> unit in the residence was a breach of their tenancy agreement as the utilities are split between them and the downstairs tenant and that had they know a 3<sup>rd</sup> unit was being constructed they would have not moved in.

The landlord testified that he had been in the back yard on September 22 and 23 constructing a shed for the downstairs tenant, in the area of yard designated or the

downstairs tenant. The landlord stated that when the upstairs tenants asked him to remove his dogs from the yard and his vehicle from the driveway he immediately did so. The landlord stated that he had not recalled the tenants wanting to bring an RV on to the property, that the parking of the RV was not part of the tenancy agreement and that the presence of the RV had created an issue between the landlord and tenants.

The tenants testified that they are requesting to change the locks due to the deterioration of their relationship with the landlord however the tenants stated that the landlord has not entered their unit without their consent or proper notice. This portion of the tenant's application is hereby dismissed.

The landlord stated that he had been calling the tenants during the time that the 3<sup>rd</sup> suite was being inspected and that the tenants had been coordinating access for inspectors to the unit. The landlord stated that when the tenants requested that he stop calling them for this purpose he immediately stopped.

The landlord testified that he had wanted to use the UV light during his inspection as the carpets were new and the tenants had a cat and dog. The landlord did mention that one of the pets had been brought on to the property without prior consent from the landlord but that he had granted consent. The landlord testified that when he became aware of how upset the tenants were with the potential use of the UV light, the landlord advised the tenants that he would not be using it. The tenants did state in this hearing that they had purchased their own UV light, checked the carpets and found no stains; the landlord expressed that he was pleased to hear this and accepted the tenant's word.

The landlord testified that when the tenants contacted him in September regarding their frustration with construction noise, the landlord agreed to cease all construction until the new year.

In this hearing the parties discussed ending the fixed term tenancy and the landlord stated that he would allow the tenants to break the fixed term lease if the tenants were unhappy and did not want to stay. The parties were advised that if they chose to go this route that it would be of benefit to both parties to use the 'Mutual Agreement to End Tenancy' form, which is a form approved under the Act.

## Law

**Section 28 of the Act speaks to Protection of tenant's right to quiet enjoyment,** and provides as follows:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

reasonable privacy;

freedom from unreasonable disturbance;

exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

use of common areas for reasonable and lawful purposes, free from significant interference.

**Residential Tenancy Policy Guideline # 6 speaks to Right to Quiet Enjoyment**

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

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.

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

• **Harassment**

Harassment is defined in the Dictionary of Canadian Law as “engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome”.<sup>3</sup> As such, what is commonly referred to as harassment of a tenant by a landlord may well constitute a breach of the covenant of quiet enjoyment. There are a number of other definitions, however all reflect the element of ongoing or repeated activity by the harasser.

**Section 7 of the Act speaks to Liability for not complying with this Act or a tenancy agreement, and provides:**

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

**Residential Tenancy Policy Guideline # 5 speaks to the “Duty to Minimize Loss,” and provides in part as follows:**

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that there was a breach to the tenants' right to quiet enjoyment, and a

reduction in the full use of the facilities provided in the rental unit, in early September, 2010.

It must be noted that when the tenants contacted the landlord due to their concerns with the parking, construction noise, phone calls, UV light or any other matter, that the landlord was very willing to stop whatever activity the tenants had issue with and immediately did so.

While the tenants had the option of applying for dispute resolution in order to seek an order instructing the landlord to complete repairs in a timely manner, or to seek a reduction in rent for repairs, services or facilities agreed upon but not provided, there is no evidence that they did so. Accordingly, I find that the tenant has established entitlement to compensation in the limited amount of \$210.00, calculated on the basis of \$14.00 per day for 15 days.

As the tenant has achieved some success with their application, I find that they are also entitled to recover the \$50.00 filing fee.

### Conclusion

The tenant may deduct \$260.00 from future rent owed to the landlord for the compensation awarded and recovery of the filing fee paid to bring their application.

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: January 7, 2011

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Dispute Resolution Officer