



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNR, MNR, MNDC, OLC, RP, PSF, LRE, RR, OPR, MNR, MNDS, MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end tenancy, a monetary order, an order that the landlords comply with the Act, an order that the landlords perform repairs and provide services or facilities, an order suspending the landlords' right to enter the rental unit and an order permitting the tenant to reduce her rent. The landlords made a cross-application for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

After the hearing the tenant submitted evidence to the Residential Tenancy Branch which was not considered.

### Issue to be Decided

Should the notice to end tenancy be set aside?  
Is the tenant entitled to a monetary order as claimed?  
Is the tenant entitled to other orders?  
Are the landlords entitled to an order of possession?  
Are the landlords entitled to a monetary order as claimed?

### Background and Evidence

The rental unit is on the lower floor of a home in which the landlords occupy the upper floor. The tenant is obligated to pay \$400.00 per month in rent, in advance on the first day of the month. The parties agreed that the tenant did not pay rent on December 1. On either December 16 or December 17 the landlords served the tenant with a 10 day notice to end tenancy for unpaid rent.

The tenant testified that previously she had paid the landlords in cash and that they gave her receipts which she thought were invalid. The tenant withdrew cash on December 3 intending to pay the landlords, but did not arrive home that day until late in

the evening and decided not to disturb them. The tenant was disturbed by noise that evening and telephoned the landlords to complain. At approximately 7:00 a.m. the following morning, the landlords attended at the rental unit to discuss the noise issue. The tenant testified that she did not pay them because she wanted to directly deposit rent monies to the landlord's bank account so she would have a proper receipt. The tenant further testified that she was willing to pay by cheque, but did not believe the landlords had given her their legal names.

The landlord seeks an order of possession based on the notice to end tenancy and a monetary order for unpaid rent for December and January.

The tenant testified that the landlord's daughter and her partner made excessive noise which kept the tenant awake on many occasions, beginning in late November. The tenant stated that she was frequently unable to sleep due to the noise. The landlords testified that they spoke to their daughter who denied making noise at night. The landlords accused the tenant of making noise.

The landlords told the tenant that their daughter would be staying with them until December 9. On the evening of December 4 the tenant went to a motel and stayed there until December 9. The tenant seeks to recover the cost of her stay at the motel as well as additional costs for transportation.

The tenant testified that the landlords or their daughter walked or pounded so heavily on the floor that one of the ceiling tiles in the kitchen fell from the frame and the blinds and valance in her bedroom fell from the wall. On December 4 the tenant arranged for a repairman to reinstall the blinds and valance and the ceiling tile at a cost of \$415.00 which the tenant seeks to recover from the landlords. The landlords theorized that the tenant removed the ceiling tile.

The tenant testified that the tenancy agreement stipulated that use of the washer and dryer were included with her rent but that the landlords disconnected the dryer. The tenant took her laundry to a friend's home and seeks to recover \$80.00 as the cost of doing laundry elsewhere. The tenant testified that she was unable to locate the tenancy agreement to enter into evidence. The landlords testified that while they had occasionally out of generosity permitted the tenant to use the laundry facilities, this was not included with her rent.

The tenant claims that she lost quiet enjoyment of her unit from November 28 – December 4 due to the noise caused by the landlord's daughter and also lost quiet enjoyment from January 9 – 31 because the temperature in the rental unit is only 10 – 12°C. The tenant testified that she has one radiant heater in the bathroom which is

ineffective. The landlords gave her one portable heater at the outset of the tenancy and told her that if it was insufficient, she could have a second heater, which the landlords eventually provided. The landlords testified that the rental unit is cold because the tenant leaves the bathroom window open.

### Analysis

The Act provides that tenants may withhold their rent if they have performed emergency repairs. Emergency repairs are very specific and do not include repairs to a ceiling or window coverings. I find that the tenant had no right to withhold her rent. I find that the landlord was in the practice of issuing receipts and that if the tenant felt those receipts were invalid, she could have sought an order that the landlord provide different or better receipts. I find that the landlords have established grounds to end the tenancy. I dismiss the tenant's application for an order setting aside the notice to end tenancy and I grant the landlords an order of possession effective 2 days after service. In the event the tenant does not comply with the order of possession, it may be filed in the Supreme Court and enforced as an order of that Court.

I find that the tenant failed to pay rent in the months of December and January and I award the landlords \$800.00 which represents the total rent for those two months. I find that the landlords are entitled to recover the filing fee paid to bring their application and I grant them an order under section 67 for \$850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court. I have not applied the security deposit to this award as the parties gave no evidence as to the amount of the deposit. The landlords are free to apply the security deposit to the award.

I find that the tenant failed to give the landlords opportunity to perform the repairs to the blinds, valance and ceiling. The tenant had an obligation to advise the landlords of the problem and permit them to perform the repairs, which I find could have been performed at a fraction of the cost the tenant claimed to have paid or possibly at no expense whatsoever. The claim for the cost of repairs is dismissed.

I dismiss the claim for the hotel bill and transportation. I find that the tenant has not proven on the balance of probabilities that the noise in the rental unit was so severe that she was unable to stay in the unit.

I dismiss the claim for laundry expenses as I find that the tenant has not proven that use of the laundry facilities were part of the tenancy agreement.

The tenant bears the burden of proving that the landlord breached the covenant of quiet enjoyment. The tenant complained that walking across the upper room was disturbing

and I find it more likely than not that the tenant was hyper-sensitive to noise. The tenant should expect that living in a multi-family dwelling would expose her to more noise than she would experience in a single family dwelling. I find there is insufficient evidence to show that the noise of which the tenant complained was excessive to the degree that compensation is warranted. I am also not persuaded that the heating issue in the rental unit is as severe as claimed by the tenant. It is clear that the tenant was advised at the outset of the tenancy that portable heaters were required as the radiant heat was inadequate, the landlord provided portable heaters and she accepted the rental unit on those terms. I find insufficient evidence to prove that the landlords breached the covenant of quiet enjoyment and the claim is dismissed.

As the tenancy is ending, I dismiss the tenant's claim for orders that the landlord comply with the Act, perform repairs and provide services and for orders suspending the landlords' right to enter the rental unit and permitting the tenant to reduce her rent.

### Conclusion

The landlords are awarded an order of possession and a monetary order for \$850.00. The tenant's application is dismissed in its entirety.

I note that tenant was served with a 2 month notice to end tenancy. As the tenancy is ending pursuant to the 10-day notice to end tenancy rather than the 2 month notice to end tenancy, the landlord is no longer obligated to give the tenant one month's compensation.

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 18, 2011

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Residential Tenancy Branch