



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, MNDC, FF

### Introduction

This hearing dealt with the tenant's application for an Order for the landlord to comply with the Act, regulations or tenancy agreement; and monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

After approximately 1 hour and 50 minutes of hearing time, as the conference call was about to be concluded, the telephone call disconnected. I determined that the combination of the testimony heard during the hearing time and the written submissions of the parties sufficient for me to reach a decision and that it was not necessary to reconvene the parties.

### Issue(s) to be Decided

1. Is it necessary to issue an Order to the landlord for compliance with the Act, regulations or tenancy agreement?
2. Has the tenant established an entitlement to compensation from the landlord for damage or loss under the Act, regulations or tenancy agreement?

### Background and Evidence

The tenancy commenced December 15, 2010 and the tenant is required to pay monthly rent of \$2,200.00 plus a portion of utility costs. The rental unit is the upper level of a house. A basement suite located below the rental unit is also tenanted.

Both parties provided a considerable amount of testimony and provided written submissions for this proceeding. I have summarized the respective positions below.

### **Tenant's position**

The tenant submitted that when her tenancy commenced the basement suite was occupied by tenants that she quite liked and both sets of tenants lived on the property harmoniously. However, those basement suite tenants subsequently vacated and since May 31, 2011, when the current basement suite tenant moved in, the tenant has endured a loss of quiet enjoyment in the following ways:

- The basement suite tenant permits her two small dogs to bark constantly;
- The basement suite tenant's dogs urinated on the tenant's rug;
- The basement suite tenant is responsible for changing of locks in the garage;
- There have been domestic assaults between the basement suite tenant and her boyfriend;
- The basement suite tenant and her guest are nasty to the tenant's child to the point where the tenant's child no longer wants to play outside; and,
- There are frequent police visits to the basement suite.

The tenant complained to the landlord, who was out of town, that she was being disturbed by the basement suite tenant. When the landlord came to town in mid-June 2011 the landlord arranged for a meeting with both of the tenants. The tenant testified that the meeting was on June 18, 2011 and that prior to the meeting with both tenants, the tenant personally gave the landlord a letter outlining her concerns. For three or four days the noise level improved but then it worsened.

Approximately 10 days after the meeting the tenant was calling the landlord to complain about the basement suite tenant again. The landlord responded by saying the tenants would have to work their differences out or she would evict both tenants.

The tenant has been in nearly daily communication with the by-law office of the municipality but the by-law officers have told her their only remedy is to ticket the lower tenant for unlicensed dogs.

In addition to requesting an Order for compliance, the tenant is seeking compensation from the landlord in the amount of \$5,000.00. The tenant submitted that this amount is for the months of June and July during which time the tenant has been limited to using 1/3 of her living space due to excessive noise created by the downstairs tenant, and a loss of work which the tenant does from home.

### **Landlord's position**

The landlord stated that she did not receive a letter from the tenant June 18, 2011 and the landlord was of the belief the meeting took place on June 20, 2011. The landlord also stated the tenant did not include a copy of the letter in the tenant's evidence package.

The landlord has attended the residential property three times since June 2011 in order to deal with the tenant's complaints and this application. The landlord first arrived in town June 13, 2011 but that it took seven days to schedule a meeting that worked for all of the parties. After the June 20, 2011 meeting the landlord thought the issues related to noise had been sufficiently resolved. The basement suite tenant was to keep her dogs in the far bedroom in an effort to cause the least disturbance if they barked, as well as keep the windows and doors closed. The landlord pointed out that dogs will bark and there is wildlife in the area which often causes dogs to bark. The tenant also has a dog.

When leaving town again on June 27, 2011 the landlord contacted the tenants to see how things were going. Until the tenant complained again in mid-July the landlord was of the belief the noise issues were largely resolved. The landlord also provided the following responses:

- It was the landlord that had the locks in the garage changed.
- The rug in the rental unit that may have been urinated on belonged to the landlord.
- The landlord has received calls from the by-law office confirming that the tenant is calling almost every day to complain about the basement suite tenant.

The landlord submitted that before the current basement suite tenant moved in there was another set of tenants that lasted only a brief period of time due to the conduct of the tenant.

The landlord suggested that the tenant may have mental health issues after discussions with the police and after hearing from neighbours who complained about the tenant yelling.

The landlord has taken steps to try to deal with the clash between the tenants given the information she was provided. The landlord has reached an agreement for the basement suite tenant to vacate the basement suite September 1, 2011 for landlord's use of property. The landlord has incurred travelling costs and has to compensate the basement suite tenant for ending the tenancy for landlord's use.

Provided for my consideration by the tenant was a copy of a written submission; a written summary of events between May 30, 2011 and June 18, 2011; excerpts of numerous messages between the tenant and the basement suite tenant; a letter addressed to the landlord dated June 19, 2011; a sequent of events involving the basement suite tenant between July 27, 2011 and August 16, 2011; and, a letter addressed to a by-law compliance officer by the tenant on August 12, 2011.

The landlord provided a written submission and written confirmation from the basement suite tenant that she would be vacating the basement suite September 1, 2011.

### Analysis

Upon consideration of the evidence before me, I make the following findings and provide the following reasons.

#### **Order for compliance**

Upon hearing from the landlord and upon written confirmation of the basement suite tenant, I am satisfied the basement suite tenant has agreed and will vacate the property by September 1, 2011. Therefore, at the time of writing this decision, I find it unnecessary to issue any Order for compliance to the landlord.

#### **Request for monetary compensation**

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Under section 28 of the Act, a tenant is entitled to quiet enjoyment of the residential property. Quiet enjoyment includes the right to freedom from unreasonable disturbance and use of common areas free from significant interference.

Residential Tenancy Policy Guideline 6: *Right to Quiet Enjoyment* provides that a basis for finding a breach of quiet enjoyment includes situations where a landlord stands idly by while others engage in frequent and ongoing interference with another tenant's right to quiet enjoyment.

The issue for me to determine is whether the landlord in this case has sat idly by while the downstairs tenant significantly interfered with or unreasonably disturbed the tenant. It is important to note that in determining whether the tenant is entitled to compensation from the landlord for the months of June and July I must only consider the events that took place up to the date she filed this application. I recognize that the tenant has submitted a description of several events that may have taken place after she filed this application; however, subsequent disturbances do not form a basis to make an award a previous time period.

In the tenant's evidence package she describes in detail the disturbances she experienced between May 30, 2011 and June 18, 2011. The tenant also provided copies of text message exchanges with the downstairs tenant on June 18, 2011. During their text exchanges, both tenants indicate they do not want to be contacted until their meeting with the landlord scheduled for Monday, which would be June 20, 2011.

It is undisputed that the landlord set up and participated in a meeting with both tenants in mid-June which I find took place on June 20, 2011 as stated by landlord during the hearing. This meeting was only two weeks after the downstairs tenancy commenced and, after hearing from both parties, I accept that at the end of that meeting the parties had reached an agreement in an effort to resolve future conflicts.

In the tenant's written submission the tenant indicates that from June 18, 2011 through July 15, 2011 she continued to communicate with the landlord about issues with the downstairs tenant. However, during the hearing, the tenant indicated that approximately 10 days after the June 20, 2011 meeting the tenant began contacting the landlord again. I find the written submission vague and not sufficiently specific to place a significant amount of weight on the evidence.

In the tenant's written submission, the next description of a disturbance is dated July 23, 2011– which is after the tenant had filed this application.

The landlord submitted that she spoke with the tenant June 27, 2011 before she left town to ensure things were fine. The landlord submitted in writing that the next communication the landlord received was July 20 or 21 with respect to the dogs barking; however, during the hearing, the landlord stated she did not hear from the tenant until July 23, 2011. The landlord submitted that during their conversation in July

she told the tenant she would end the tenancy for the downstairs tenancy with a 2 Month Notice but that the tenant was not satisfied with this response.

Given the basement suite tenancy had been in effect approximately two weeks when the landlord arrived in town and tried to schedule a meeting with the tenants I find this action not consistent with a landlord sitting idly by while a tenant is unreasonably disturbed by another tenant. I find insufficient evidence of unreasonable disturbance or significant interference of the after the meeting of June 20, 2011 and before this application was filed. Further, if there was such disturbance or interference caused by the downstairs tenant during this period of time, I find there is insufficient evidence that this was reported to the landlord and the landlord's response was to sit idly by and permit the behaviour to continue. Therefore, I deny the tenant's request for compensation for the period of June and July 2011.

### Conclusion

I do not find it necessary to issue an order for compliance to the landlord as I am satisfied this dispute has been remedied by the departure of the basement suite tenant. I have dismissed the tenant's request for 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: September 20, 2011.

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Residential Tenancy Branch