



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, PSF, LRE

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order and an order to have the landlord provide services or facilities required by law and to suspend or set conditions on the landlord's right to enter the rental unit.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

I noted at the start of the hearing that the tenant had named one of the landlord's agents as the respondent. The landlord's agent provided the landlord's company name and with the tenant's agreement I have amended the tenant's Application to reflect the correct landlord name.

At the outset of the hearing the landlords' agent testified the tenant served the landlord's other agent on November 25, 2011 with only a notice of hearing and the fact sheets provided by the Residential Tenancy Branch (RTB) but did not include a copy of his Application for Dispute Resolution. The agent further testified it was not until December 1, 2011 that they received a copy of the tenant's amended Application and that they never received a copy of the original Application.

The tenant testified that he served all of the documents including his Application on November 25, 2011. When faced with disputed testimony without corroborating evidence it is impossible for a third party to determine what actually occurred and the burden falls to the applicant in this case to provide sufficient evidence to establish that he served all of the required documents. I find the tenant has failed to provide such evidence.

Section 59(3) of the *Residential Tenancy Act (Act)* requires a person who makes an Application for Dispute Resolution to give a copy of the application to the other party within 3 days of making the application. The section provides no remedy or outcome should the applicant fail to meet this deadline. The landlord sought either a dismissal or an adjournment, as she had not had an opportunity to prepare for the hearing.

RTB Rule of Procedure #3.5 states that all evidence the applicant intends to rely upon must be received by the RTB and the respondent at least 5 days before the dispute resolution proceeding. From the landlord's agent's testimony all evidence including the

tenant's amended Application was received December 1, 2011, in accordance with Rule 3.5.

While this clearly provided the landlord sufficient time to prepare for this hearing I grant the landlord's request for an adjournment based on the potential that the tenant failed to serve the landlord with the Application on November 25, 2011 with the entire package.

However, as the nature of the tenant's Application is based on whether or not he can use the rental unit as a place to sleep during the project and since the project is still underway I ordered the hearing to be reconvened on December 14, 2011 at 11:00 a.m.

To accommodate this date I ordered the landlord to submit any evidence to the RTB and the tenant no later than 12:00 noon on Monday December 12, 2011 and the tenant to provide the landlord and the RTB with any additional evidence he may have in response to the landlord's evidence no later than 12:00 noon on Tuesday December 13, 2011.

The landlord's agent raised concern that she could not possibly prepare in such a short period of time. I questioned her as to what preparation she had made to date and she indicated that she had not prepared anything other than the submission of the one letter noted below.

As I have already provided the landlord with more time in addition to that allowed in the Rules of Procedure through this adjournment, I am not prepared to adjourn the proceedings later because of the landlord's lack of preparation, prior to the first hearing.

Both parties provided additional evidence in accordance with the deadlines, as ordered above.

#### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to provide services or facilities required by law; setting conditions on the landlord's right to enter the unit; to a monetary order for compensation for damage or loss; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 29, 67, and 72 of the *Residential Tenancy Act (Act)*.

#### Background and Evidence

The parties agree the tenancy began in April 2011 as 1 year fixed term tenancy with a monthly rent of \$950.00 due on the 1<sup>st</sup> day of each month with a security deposit of \$475.00 paid.

The parties agree the landlord began an improvement project in the residential property on November 21, 2011 to upgrade the plumbing throughout the entire 10 story building. The landlord's agent explained the project including required the exposure of all pipes in

the building by the removal of drywall in common areas and in individual rental units. The agent further provided the project began in the basement and parking area and moved upwards through the entire building.

She also testified that as of today's date the plumbing has all been completed and in reinstallation of drywall has begun in most of the other rental units. Once individual units are complete the common areas will be completed. The landlord expects the project to be complete by January 15, 2011, ahead of the scheduled February completion.

The tenant testified that he works nights and sleeps in his rental unit during the day. He states that since this work began the landlord has entered his rental unit at least 6 or 7 days and even when they do not enter the noise from the other floors does not allow him to get adequate sleep.

The tenant submits that he believes his health is being compromised but he did not submit any medical documentation. He also submits that as a result of lost sleep he has had to miss work on numerous occasions.

The tenant testified that he did try to stay at his girlfriend's home once but it was too far away and that her accommodation did not provide suitable sleeping arrangements for two people. He further stated that he did not have friends he could stay with and because he had missed some work he was unable to pay for hotel accommodation.

The tenant also testified the water has been shut off at least 10 times. The landlord agrees it had been shut off on 3 occasions throughout the building and may have been also shut off when the contractor was working inside this tenants unit.

The tenant has provided the following relevant documents as evidence:

- A copy of an undated notice from the landlord regarding a "Domestic Water Pipe Replacement Project" advising the project will begin on November 21, 2011 and be completed within 2 ½ months. This notice provides a full description of the project and how the tenants will be informed of any required entry to specific rental units;
- Copies of other notices related the project such as a general schedule; notice of a meeting; notices of water shutdown (November 28 and December 12 and 13);
- A copy of a Notice of Entry dated November 29, 2011 advising the tenant the landlord will enter the rental unit from December 2, 2011 to December 19, 2011 between the hours of 8:00 a.m. and 5:00 p.m. The notice goes on to say entry may be at various times; may not enter each day and then outlines specific days the landlord intends to enter this unit with detailed information of the purpose of each specific entry such as December 2 – cut walls to prepare for pipe installation;

- The tenant has also provided several typewritten notes signed by friends and work colleagues confirming the tenants work schedule to be nightly from 9:00 p.m. to 5:00 a.m. and that since the project began the tenant has been impacted by not being able to sleep; and
- Letters of support from other tenants in the building who confirm this tenant attended the meeting and that management spoke specifically to this tenant telling him that they would take to him after the meeting or call him later to discuss the issues.

The landlord provided a copy of a letter addressed to all tenants dated November 29, 2011 offering to compensate residents for inconvenience caused by the re-piping project and that compensation will take place in February 2012 as the amount is yet to be determined.

The tenant seeks compensation in the amount of \$2,030.00 that includes the equivalent of 2 month's rent; \$80.00 for lost wages; and the \$50.00 filing fee. The landlord offered to provide a proposed compensation amount on the condition the tenant not divulge the amount to other tenants. The tenant indicated he was not willing to accept anything less than the amount he sought in his Application.

The landlord also provided a handwritten note from the contractor outlining dates and times of entry into the dispute rental unit as follows:

- December 2, 2011 – 12:00 p.m. to 4:00 p.m.
- December 5, 2011 – 8:00 a.m. to 4:00 p.m.
- December 7, 2011 – various times throughout the day
- December 8, 2011 – access denied
- December 9, 2011 – access denied

The landlord testified that as a result of the denial of access on December 8 and 9 2011 the city inspectors have been able to inspect the entire building except for this rental unit, thus holding up the progress of the completion of the project.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party disputes that the plumbing throughout the residential property required replacement. As such, I make no findings on the matter of the necessity of the work.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to: rights to 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 the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I accept the landlord's evidence and testimony that they took all reasonable steps to ensure the project would minimize the impact to tenants. I also acknowledge that the landlord understood that the work and its schedule was intensive and required intrusion into individual rental units, as confirmed by the landlord's letter to tenants offering compensation.

Residential Tenancy Policy Guideline 6 stipulates that "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."

Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

As such, I make note that the project work was completed Monday to Friday normally from between 8:00 a.m. and 5:00 p.m. leaving the residential property undisturbed for all evenings, nights and weekends. While this schedule minimizes impacts to tenants who do not have daytime sleeping requirements, it does little to minimize the impact on tenants who work night shifts.

I accept the tenant would have lost sleep on those specific days the contractor needed to enter his rental unit. I also accept that the tenant would be impacted when work was

completed on adjoining units and common areas adjacent to the tenant's rental unit. However, I note the entire duration of the project to date has been less 3 ½ weeks, and that now some delay has been incurred resulting, in part, from the tenant's actions.

I find the tenant has suffered a loss and that it results from the landlord's failure to provide quiet enjoyment of the rental unit as required under Section 28 of the *Act*. I accept that this had resulted in this tenant being unable to use the rental unit to sleep due to his schedule and as such, the loss is greater than it would be for other tenants.

However, having said this I also accept the landlord was failing to provide quiet enjoyment while meeting their obligations under Section 32, and as such it is a temporary inconvenience to the tenant as opposed to a culpable act of restricting quiet enjoyment.

For these reasons, I find the tenant is entitled to compensation, however, I am not persuaded by the tenant's assertion that the compensation should be the equivalent of 2 months' rent for the following reasons.

First, the project to date has only taken 3 ½ weeks for which the majority of disturbance is nearly complete. Second the remaining work, to be completed by mid January with a break over Christmas beginning on December 21, 2011, will consist primarily of finishing work that is much quieter than removing/replacing drywall and pipe replacement.

And thirdly, the tenant complains primarily that he has been unable to use the rental unit for sleeping. While the tenant notes there were times when he was not able to use water, I find those occasions to be of short duration and have minimal impact.

Further, I find the landlord cannot be held responsible for the tenant's choice to not attend work and therefore I find the tenant is not entitled to compensation for lost wages.

As such and in conjunction with my access orders below, I find the tenant is entitled to compensation in the equivalent of ½ months rent for the duration of the project. As to the tenant's Application to set conditions on the landlord's right to access, I find the landlord's access, through the contractor, to complete this project has been reasonable.

However, I will order that with the exception of entry required for firestopping and any inspections required, the landlord must garner the tenant's agreement in writing for dates and times to complete the re-drywalling, painting, installation of fixtures, and finishing work required to complete the project.

Further to this, I order the tenant must not deny access to the landlord or contractors for completion of the firestopping and inspections required by local authorities to complete the project.

And finally in relation to the tenant's Application for services required by law, I find the landlord has not restricted any services required by law except as a temporary measure and only as required for the upgrade of the plumbing system and as such, I dismiss this portion of the tenant's Application.

Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$525.00** comprised of \$475.00 compensation and the \$50.00 fee paid by the tenant for this application.

I order the tenant may deduct this amount from a future rent payment, in accordance with Section 72 (2)(b) of the *Act*.

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: December 09, 2011.

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Residential Tenancy Branch