

## **DECISION**

**Dispute Codes**      MNDC, OLC, LAT, RR, FF, O

### **Introduction**

This is an application filed by the Tenant for a monetary order for money owed or compensation for damage or loss, an order for the Landlord to comply with the Act, regulation or tenancy agreement, an order to authorize a Tenant to change the locks to the rental unit, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and the recovery of the filing fee.

Both parties have attended the hearing by conference call and have given testimony. As both parties have attended and have both acknowledged receiving the notice of hearing and the submitted documentary evidence, I am satisfied that both parties have been properly served.

Section 63 of the Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the parties during the hearing led to a resolution. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on August 31, 2012 at 1:00 pm. The Landlord shall receive an order of possession to reflect this agreement. As well, since the Tenancy is ending the Tenant's application regarding orders save the monetary claim is withdrawn by the Tenant.

Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Tenant's claims for recovery of litigation costs are dismissed.

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

Is the Tenant entitled to a monetary order?

Background, Evidence and Analysis

This Tenancy began on April 11, 2012 on a fixed term tenancy until March 30, 2012 as shown by the submitted signed tenancy agreement. The monthly rent was \$2,000.00 payable on the 1<sup>st</sup> of each month. A security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00 were paid on April 11, 2012.

Both parties agreed in their direct testimony that the Tenancy was for the 2<sup>nd</sup> and 3<sup>rd</sup> levels of the rental house. Both parties agreed that at the beginning of the Tenancy, the rent for May was reduced to \$1,100.00 because the 3<sup>rd</sup> level was still being worked on for renovations. In June a rent of \$1,730 was agreed upon by both parties as renovations continued for approximately 1 week into June. Full rent of \$2,000.00 was paid from July onward.

The Tenants seek monetary compensation for \$3,478.00. This consists of \$3,415.00 for the loss of quiet enjoyment and \$63.00 for the recovery of July utilities.

During the hearing the Landlord stated that he wished to concede the cost of the July utilities of \$63.00 to the Tenant. As such, I find that the Tenant has been successful in this portion of their claim.

The Tenants state that from the period of the beginning of the Tenancy to just before this hearing date that they have suffered the loss of privacy, constant construction noises from the Landlord's renovations and being bothered by numerous contractors. One of the Tenants, L.O. is a night shift nurse who sleeps during the days stated that she has suffered numerous interruptions from sleeping because construction noises and workers at the rental unit. The Landlord has stated that the Tenants were aware of the construction going on at the rental property, but has conceded that construction was ongoing throughout this period with his major contractor finishing working near the end of June and finishing work that continued thereafter. The Landlord has stated that there were inconveniences to the Tenants, but that they were only minor and temporary. The Tenant's dispute this stating that the initial delay was extended with no end date given by the Landlord. The Tenants seek compensation of \$3,415.00 which is equal to 50% of the rent paid until the end of August.

Both parties have submitted documentary evidence which has been reviewed and considered in this hearing. I find that the Tenants have established their claim for the loss of quiet enjoyment. However, the Tenants have failed to satisfy me on the monetary amount being claimed. The Tenant's have not shown how the loss resulted in

the loss of use of ½ of the rental unit as opposed to the inconveniences suffered. On this basis, I am satisfied that a nominal award of \$950.00 is warranted.

The Tenant's are also entitled to the recovery of the \$50.00 filing fee.

The Tenant's are granted a monetary order for \$1,063.00.

### Conclusion

The Landlord is granted an order of possession by mutual agreement for August 31, 2012. The Tenant is granted a monetary order for \$1,063.00.

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: August 17, 2012.

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Residential Tenancy Branch