



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

The Tenant appeared and affirmed that she served the Landlord on September 16, 2012 with the Dispute Resolution hearing documents and her evidence by registered mail. Canada Post receipts were provided in the Tenant's evidence. I noted that the Landlord's agent submitted evidence to the *Residential Tenancy Branch* in response to the Tenant's claim. Based on the foregoing I find the Landlord was served notice of this proceeding in accordance with the Act and I continued in the Landlord's absence.

### Issue(s) to be Decided

Should the Tenant be awarded a Monetary Order?

### Background and Evidence

The Tenant submitted documentary evidence which included, among other things, copies of: her written statement and photos of the rental unit that were taken between November 2011 and March 30, 2012. The Tenant advised that she did not receive evidence from the Landlord or her Agent.

The Tenant advised that she entered into a five year tenancy that began on June 1, 2011 for the 3 bedroom main floor unit of the rental house with the Landlord residing in the lower level. Rent was payable on the first of each month in the amount of \$1,600.00 and on April 29, 2011 she paid the Landlord \$800.00 as the security deposit.

The Tenant submitted that at no time during their tenancy negotiations did the Landlord tell them that she was going to have major renovations done to the house. In August 2011 the Landlord informed the Tenants that she was vacating the lower suite because she was having contractors renovate it as well as the front and back yard. The Tenant

pointed to her written statement and the photos which supported her argument that this was a major renovation job with contractors at the house daily from 7:30 a.m. to as late as 5:00 p.m. Monday through Saturday. She said the noise was non-stop and at one point the contractors removed an entire wall which gave them unlimited access to the Tenant's suite and possessions.

The Tenant submitted that she lived in the rental unit with her two young children and her husband who worked out of the country and would be home for several months at a time. She said that once the wall was taken down she could not leave the house for fear that the contractors would enter her space. She pointed out that on several occasions the contractors needed access to her suite and they initially did not provide her with proper notice of entry. They simply would knock on her door and ask permission to enter. She stated that she had no privacy when they were working on the outside siding as they could look inside every window. They were constantly there making noise.

The Tenant advised that the construction noise became unbearable so she negotiated a mutual agreement to end the tenancy with the Landlord effective March 31, 2012. She said the Landlord had to have known she was planning this work and that she did not disclose this to her because she wanted the rental income to pay for the work. She is seeking compensation for loss of quiet enjoyment equal to 33% of her monthly rent for the eight months she had to endure the construction which is \$4224.00. She is also seeking reimbursement of 50 % of the painting costs of \$300.00 plus 50% of her moving costs of \$250.00.

She advised that because she negotiated a five year term she wanted the interior painted however the Landlord refused. The Landlord verbally agreed to allow the Tenant to paint the interior, at the Tenant's cost. So she believes that she should be able to recover 50% of her costs as she is not there to benefit from the painting. She also had to endure moving costs earlier than expected and therefore should be reimbursed.

### Analysis

The Tenant was not served with copies of the Landlord's evidence which is a contravention of section 4.1 of the *Residential Tenancy Branch Rules of Procedure*. Considering evidence that has not been served on the other party would create prejudice and constitute a breach of the principles of natural justice. Therefore as the Tenant has not received copies of the Landlord's evidence I find that the Landlord's evidence cannot be considered in my decision.

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.

I accept the undisputed evidence that the Landlord engaged in a major renovation project that involved major construction to the front and back yard, the exterior of the entire house, and a redesign of the lower level which required removal of a wall that left the Tenant's rental unit unsecure.

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.

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 or for loss of their quiet enjoyment of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

I find it undeniable that the Tenant has suffered a loss of quiet enjoyment, for approximately eight months from August 2011 to March 2012, and therefore suffered a subsequent loss in the value of the tenancy for that period. I further find that the Tenant did what was reasonable in obtaining a mutual agreement to end the five year fixed term. As a result, I find the Tenant is entitled to compensation for that loss.

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 being completed Monday to Saturday normally from between 7:30 a.m. and 5:00 p.m. leaving the residential property undisturbed for all evenings, nights and Sundays. I note that during the yard renovations they were not able to use the property during the renovation period.

Based on the aforementioned I hereby award the Tenant compensation in the amount of **\$4,224.00** (33% of \$1,600.00 x 8 months).

The Tenant has sought \$250.00 in moving expenses and \$300.00 for painting the rental unit however she did not provide evidence to prove her actual costs for these items. Therefore I find there to be insufficient evidence to prove the Tenant suffered a loss for these items and these claims are hereby dismissed, without leave to reapply.

The Tenant has primarily been successful with her claim; therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

The Tenant has been awarded a Monetary Order in the amount of **\$4,274.00** (\$4,224.00 + \$50.00). This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 14, 2012.

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Residential Tenancy Branch