



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      O, OLC, MND, MNDC, MNSD, FF

### Introduction

This was the hearing of applications by the tenant and by the landlord. The hearing was conducted by conference call. The tenant and the landlord called into the hearing, presented evidence and made submissions.

### Issue(s) to be Decided

Is the tenant entitled to end his tenancy?

Is the landlord entitled to a monetary award and if so, in what amount?

### Background and Evidence

The rental unit is a basement suite in the landlord's house in Vancouver. The tenancy began on September 1, 2012 for a one year fixed term, with monthly rent of \$1,450.00 payable on the first of each month. The tenant paid a security deposit of \$725.00 on August 5, 2012. The tenant responded to an advertisement and met the landlord at the rental property to inspect the rental unit before the tenancy agreement was signed.

Soon after the tenancy began the tenant complained about noise in the rental unit. The tenant complained that he was disturbed in the mornings by noise from the landlord's children that interfered with his sleep. He said that the noise was affecting his academic studies. The landlord was surprised by the tenant's noise concerns because she had rented to students before the tenant moved in. In an e-mail to the tenant she noted that:

My oldest child is in school full-time and my youngest is only here  
Tuesday/Thursday afternoons for her nap. They also both go to bed at 7:30 P.M.  
so there would be plenty of time for you to have peace and quiet and to study.

The landlord offered to allow the tenant to sublet the unit for the balance of the term of the tenancy. The tenant declined the offer to sublet the rental unit. He disagreed with the landlord's statements about noise levels and the timing of the landlord's activities. He complained that he was disturbed on weekday mornings and on weekends and he complained that the landlord was not affording him with quiet enjoyment of the rental unit. Among other statements, he said:

I would like to restate that I am *still* willing to amicably resolve this issue; if we cannot reach an agreement, however, it may be necessary to involve a third party in the residential tenancy branch to oversee the equitable resolution of this issue. I believe the outcome of this dispute should alleviate me of any obligations prescribed by your lease, and furthermore, will also accommodate me the necessary compensation for my moving costs.

The landlord responded by e-mail on October 13<sup>th</sup>; she said:

I'm sorry that you are still finding it's too noisy. All of our previous tenants have been UBC students, and our last tenant was actually studying for her MCAT, hence why we are so surprised

As you seem extremely unhappy, and we would not want someone living in our residence who we feel is threatening us and who is recording us, we have decided you can terminate the lease as of November 30<sup>th</sup>, with the damage deposit as the only penalty.

On October 17, 2012 the tenant gave a notice to end his tenancy. He said: "Please accept this as my official 30 – day notice; I will have vacated your basement suite located at (address) no later than November 17<sup>th</sup>, 2012."

On October 20<sup>th</sup> the tenant proposed that he would move out at the end of October and would not pay rent for November, but would allow the landlord to keep the security deposit in exchange for terminating the lease. The landlord did not respond to this offer.

The tenant was living for the most part with his parents after he gave the notice ending his tenancy. The tenant did not fully move out of the rental unit until mid-November. In an e-mail dated November 15, 2012 the tenant said that he would come by that evening to finish cleaning.

The landlord claimed that the tenant did not clean the rental unit and did not clean the carpets as required at the end of the tenancy. In her e-mail to the tenant sent on November 20<sup>th</sup> she complained that the unit was not properly cleaned and the carpets were dirty; the landlord said:

We are busy trying to rent it for December 1<sup>st</sup> so that there would be no lost rental income against you and your parents, just the security deposit for the cost of cleaning. We have not incurred any costs to advertise the suite, as we have been using craigslist.

The landlord submitted photographs of the rental unit, taken before and after it was cleaned by the tenant. The landlord said that the photographs showed that the tenant did not do an adequate job of cleaning the rental unit

In her application for dispute resolution the landlord claimed payment of the sum of \$4,650.00. She said in the application that the claim was for: "Lost rent for 3 months plus carpet cleaning and cleaning of 2 bedroom unit." The landlord did not provide any receipts or invoices for any cleaning or carpet cleaning costs that were incurred.

The tenant claimed that he was entitled to end the fixed term tenancy without liability because the landlord breached the tenancy agreement by failing to provide him with quiet enjoyment. Although the landlord made reference to recovery of expenses, such as moving costs, he did not make such a claim in his application and he did not request a monetary award. The tenant provided a computer disk with recordings that he said typified the noise from the landlord's activities above him.

The landlord testified that the tenant was well aware when he rented the unit that she had young children. He met with her at the house and sat in her kitchen; there were toys and evidence of her children plainly visible and she discussed the matter of noise levels with him.

#### Analysis and conclusion

A Notice to End Tenancy given by a tenant should end a tenancy on the last day of the month that is the day before the day in the month that rent is due under the tenancy agreement. The tenant's notice purported to end the tenancy on November 17<sup>th</sup>, not of the 30<sup>th</sup> of November. The tenant apparently paid rent for November, but fully moved out before the end of the month. The tenant claimed that he terminated the tenancy pursuant to Section 45(3) of the Residential Tenancy Act because the landlord breached a material term of the tenancy and did not correct it within a reasonable time.

Section 45(3) of the *Residential Tenancy Act* provides:

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Residential Tenancy Policy Guideline No. 6 provides that breach of the covenant of quiet enjoyment has been held to be a breach of a material term of a tenancy agreement. The guideline notes that the standard of proof is high – it is necessary to find that there has been a significant interference with the use of the premises.

I find that the tenant was not entitled to end the fixed term tenancy for the reason given. The evidence showed that he knew, or should have known when he rented the unit that the landlord's family included young children who lived upstairs. The landlord has rented to other students without incident or complaints about a lack of quiet enjoyment. I find that the tenant has not proved that he suffered a loss of quiet enjoyment so

serious that it constituted the breach of a material term of the tenancy entitling him to end the tenancy without proper notice before the end of the fixed term.

The tenancy was for a fixed term that would not end until August 31, 2013. I find that the tenant was not entitled to end the tenancy as he did without incurring any liability to the landlord for loss of revenue under the fixed term tenancy agreement, I therefore dismiss the tenant's application without leave to reapply.

The landlord offered to release the tenant from the tenancy agreement at the end of November with the retention of the security deposit as the only penalty. The tenant did not accept the offer. The landlord endeavoured to re-rent the unit for December but was not successful. The landlord claimed cleaning, but provided no documents or invoices to support the claim; in the absence of proof of any expenditure I deny the claims for cleaning and carpet cleaning.

I award the landlord loss of revenue for the month of December in the amount of \$1,450.00. The landlord is entitled to recover the \$50.00 filing fee for her application for a total award of \$1500.00. I order that the landlord retain the security deposit of \$725.00 in partial satisfaction of this award and I grant the landlord a monetary order for the balance of \$775.00. This order may be filed in the 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: January 31, 2013

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Residential Tenancy Branch

