



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

**MNDC, RR, FF**

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenants have made application for compensation for unpaid rent and an Order the landlord make repairs to the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### Preliminary Matters

The tenants confirmed that they have vacated the rental unit; therefore an Order requiring repair to the rental unit was not required.

The landlord confirmed that he received copies of the tenant's 10 photographs; he then inadvertently submitted those copies to the Residential Tenancy Branch. Any photographs referenced during the hearing were described.

### Issue(s) to be Decided

Are the tenants entitled to compensation in the sum of \$1,000.00 for the loss of quiet enjoyment throughout the tenancy?

### Background and Evidence

The tenancy commenced on November 15, 2011; rent was \$650.00 due by the 1<sup>st</sup> day of each month. The tenants vacated the unit on February 28, 2013, as the result of a 2 Month Notice to End Tenancy for Landlord's Use. The tenants received the required compensation.

The tenant supplied the following evidence:

- October 9, 2012 letter from a medical professional indicating that the tenants were stressed;
- February 18, 2012 letter from the tenants to landlord expressing concern about noise and the lack of heat;

- May 24, 2012 letter from the tenants to the landlord complaining about the dishwasher being used late at night; a broken window; loose kitchen cabinet; leak under bathroom sink; the need for weather stripping around doors;
- December 4, 2012 letter from the tenants to the landlord complaining of loud voices, yelling and laughter between 11 p.m. and 2:30 a.m.;
- A undated letter confirming rental of the unit;
- A December 2, 2012 letter from the landlord, giving the tenants 2 months and twenty-eight days notice to end the tenancy;
- A 2 Month Notice to End Tenancy for Landlord's Use of the Property issued on December 5, 2012; and
- A City of Surrey letter signed by the tenant on August 24, 2012, confirming the tenant had been given a smoke alarm.

The tenants have claimed compensation in the sum of \$1,000.00 for the loss of quiet enjoyment and a failure of the landlord to complete repairs throughout the tenancy.

The tenants rented a basement unit in a wood-framed home; the landlords and their son lived in the upper unit. There is a 2nd basement rental unit in the home.

The 1<sup>st</sup> letter to the landlord asked to have a stove-top vent fan replaced and mentioned that the heat in the unit had not, on several occasions, been high enough. The thermostat to the force-air furnace is in the landlord's suite and the landlord had failed to turn the heat on.

Other matters raised by the tenants included:

- The landlord yelling and laughing, keeping the tenants awake;
- Landlord's use of their dishwasher, late at night;
- A loose kitchen cabinet;
- Leaking pipe under the bathroom sink;
- The need for weather-stripping around the doors; and
- A broken kitchen window.

There was no dispute that the tenants would hear the landlord's dishwasher. The landlord said the tenants complained a number of times which resulted in the landlord abandoning use of the dishwasher. The tenants said that the dishwasher would vibrate the wall and ceiling. The tenants kept a record of dates that the dishwasher was used by the landlord.

The tenants could also hear the sounds of the landlord yelling, talking and laughing. On 2 occasions the tenant's called the police; once at 7 p.m. when the landlord was having a family bar-b-q. The tenants felt that the activities were causing a disturbance.

No written communication occurred between June and December 2012; the tenants had kept notes of events that had occurred and discussions they had with the landlord. They were told not to place organics into one of the recycling bins; they were told to be careful with the use of electricity, that if the tenants did not like the sound of the landlord living above, the tenants could move; and that their boot mat placed outside of their door was removed.

During the hearing the tenants said that they obtained a smoke alarm as the wired alarm did not work.

The tenants supplied photographs of the heater purchased by the landlord; a curtain hanging in front of a window; a window that was partly ajar; the kitchen cabinet; weather-stripping that had come detached; a hole in woodwork; and water lines that ran over the top of a electrical outlet.

The tenants believed that the water line, installed above an electrical outlet posed a risk. No report supporting this allegation was submitted.

The landlord said that he had completed repairs to the bathroom sink and that a check of the reported leak showed that the pipes were sweating, but not leaking.

The landlord agreed that 1 screw was loose on a kitchen cabinet and that he had not repaired this.

In February the landlord installed stick-on weather stripping as an interim measure, as he did not want to work on the doors during a period of time when it was cold outside. In June or July 2012 the permanent weather-stripping was installed.

The landlord confirmed that the kitchen window was difficult to fully close, but that it would close. The window was not broken and would seal once closed.

The landlord did replace the stove hood; but it took some time as he initially attempted to locate a replacement for the fan that had been in the unit. The landlord installed an extractor fan.

The landlord said on 1 occasion his wife had gone out and she had asked their son to turn the heat up and that he had neglected to so. The landlord then immediately purchased a heater for the tenants, to use if they found the unit cold. The tenants did not pay for hydro and the landlord did not wish to see them go without heat.

The landlord was perplexed as to why the tenants kept records of incidents but only shared those records with the landlord once Notice ending the tenancy had been given. There was no dispute that in early 2012 the tenants had been told the landlord's son might move into the unit and the landlord had even offered to assist the tenants with their move. The tenants had called the police about a lack of heat and then on another occasion when the landlord had family visiting at 7 p.m. The police had indicated that the reports were unfounded.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

While the tenants may have felt some stress, as described to their medical professional, the tenants confirmed that the letter issued by this professional was based on self-reports made by the tenants. I found that these self-reports had little weight, in relation

to the claim made by the tenants; as the medical professional was reporting only what was told.

Residential Tenancy Branch Policy suggests that a claim for quiet enjoyment must include consideration of factors such as the amount of disruption suffered by the tenants, the reasons for the disruptions, if there was any benefit to the tenants for the disruptions and whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant. I find this to be a reasonable policy.

There was no evidence before me that the amount of reported disruption caused any loss of value to the tenants. The tenants did make some complaints to the landlord and I find that the landlord did respond to those concerns, in a reasonable manner. The landlord checked the bathroom sink, installed temporary and then permanent weather stripping; they ceased using their dishwasher and provided the tenants with a heater.

I find that the few occasions where the tenants were left without heat, was inadvertent on the part of the landlord and that those occasions do not support a claim for compensation. The tenants had in fact been given a heater sometime in early February 2012; a step by the landlord to ensure the tenants would be comfortable.

I find that many of the sounds that disturbed the tenants were the result of normal day-to-day living one could expect to experience when residing in the lower portion of a wood-frame house.

I find a request that the tenants be careful with hydro usage and direction given in relation to recycling is not unreasonable and does not support a claim for the loss of quiet enjoyment.

There was no evidence before me that the landlord breached any fire department regulation or other by-law; only that the tenants obtained a free smoke alarm.

I have also considered section 7 of the Act, which requires a claimant to take steps to minimize their claim. Section 7 of the Act provides:

***Liability for not complying with this Act or a tenancy agreement***

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.***  
***(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.***

(Emphasis added)

The tenants did write the landlord several letters and I find, on the balance of probabilities that the landlord responded adequately. Further, the tenants went from May to December without having given the landlord any further written notice of issues. The tenants have claimed compensation from the beginning of the tenancy in 2011; yet

they failed to take steps, such as a request for orders early in the tenancy, which would have then minimized the claim made at the end of the tenancy.

Therefore, in the absence of evidence that the tenants suffered a loss of quiet enjoyment, as contemplated by the Act and policy; and, in the absence of evidence that the tenant's attempted to mitigate the loss they have claimed, I find that the application is dismissed.

### Conclusion

The application is dismissed.

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: April 30, 2013

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Residential Tenancy Branch

