



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANTERN PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with a tenant's application for monetary compensation for damage or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

This hearing was held over three dates in order to permit the tenant the opportunity to provide written submissions and provide a reasonable calculation of losses with the assistance of an advocate in light of the tenant's unassisted and unrealistic claim as originally filed. I also permitted the landlord to provide a response to the tenant's additional submissions. Upon hearing from all of the parties during the hearing, I was satisfied that both parties were in receipt of the submissions of the other party and had an opportunity to review and respond to those submissions. Accordingly, I have amended the application to reflect the reduced monetary claim and I have accepted and considered all of the submissions presented to me by both parties in making this decision.

### Issue(s) to be Decided

Have the tenants established an entitlement to compensation for loss of essential services or and loss of quiet enjoyment?

### Background and Evidence

The tenancy commenced September 1, 2012 and the co-tenants are required to pay rent of \$1,075.00 on the 1<sup>st</sup> day of every month.

The landlord undertook a project to replace the 45 year-old, copper water supply lines in the building (herein referred to as the re-piping project). Much of the work took place starting in April 2013 with much of the drywall and tile work was significantly completed in November 2013.

The tenant is seeking compensation of \$75.00 for loss of quiet enjoyment and \$286.64 for restriction of water during certain days in May and June 2013 when the tenant was most affected by the re-piping project.

Both parties provided evidence and detailed written submissions for their respective positions which I have reviewed and considered; however, I shall not re-state their submissions in the name of brevity. Rather, for purposes of writing this decision, I have summarized their positions below.

### **Tenant's position**

The tenant claims that on eight days [May 6 – 10, 2013 and May 13 – 15, 2013] water was shut off to the rental unit from 9:00 a.m. through to 4:00 and 4:30 p.m., as evidenced by Notices posted by the landlord. The tenants were affected by the day-time shut off of water as they work at night and usually try to sleep and bath, among other things, during day-time hours. The tenants mitigated losses by using a neighbour's toilet, a toilet in the building office, and showering at the gym on occasion.

On one of the dates referred to above (May 10, 2013) the water remained off over-night. The landlord provided the tenants with a bucket to fill with water from the kitchen sink in order to manually flush the toilet; however, each flush took three buckets of water.

The tenant submitted that water is an essential service and that lack of water made the rental unit "not liveable" for these eight days. As such, the tenant seeks compensation equivalent to 100% of the daily rent for eight days.

In addition, the tenant submitted that their quiet enjoyment was breached due to loud and intermittent construction noises; workmen who entered the unit without knocking first; and, a mere piece of corrugated plastic separating the tenant's bathroom from that of their neighbour. In recognition that Notices of Entry were given and that some noise was expected as part of this project, the tenants are limiting their claim for compensation to three dates in particular when the noise was excessive and the tenant made an audio recording of the drilling noise on: May 23, May 24 and June 7, 2013. The tenant seeks \$75.00 for loss of quiet enjoyment (calculated as \$25.00 x 3 days).

The tenant provided a CD with three audio recordings purportedly taken on the above dates. The recordings are all less than one minute in duration.

### **Landlord' position**

The landlord submitted that at no time were the tenants without a water supply to the rental unit during the re-piping project. The landlord explained that there are three "risers" for hot and cold supply lines that enter the rental unit: one for the kitchen sink; one for the bathroom sink; and one for the toilet and bathtub. The landlord limited shut offs to one riser at a time and when a riser was shut off it was done so during the day-time hours as permitted by section 29 of the Act. Further, the Notices posted by the landlord indicated shut offs may occur during the hours of 9:00 p.m. – 4:30 p.m. but that the actual shut-offs were not necessarily that long; for example: the bathroom sink riser was only shut off between 9:30 a.m. and 3:30 p.m. The landlord acknowledged that May 10, 2013 was an exception and water was shut off to the tenant's toilet and bathtub overnight.

The landlord refuted the tenant's position that the water was actually restricted for eight days based only on the general-purpose Notices posted by the landlord for multiple units. Rather, the landlord submitted that risers in the rental unit, or lines feeding a riser in the rental unit, were shut off on a total of five days based upon the plumber's invoices submitted as evidence.

The landlord acknowledged that, at times, the tenants suffered inconvenience and disruption as a result of the re-piping project but was of the position the disturbance does not meet the threshold for compensation since the disruption was temporary, the tenants did not have to leave the rental unit to seek alternative accommodation, and the tenant's right to quiet enjoyment must be balanced by the landlord's right and obligation to repair a residential property.

Finally, the landlord acknowledged the drilling through concrete could be heard in the building but submitted that drilling a hole took approximately five minutes per hole and that nine holes were drilled.

### **Analysis**

Upon consideration of everything presented to me, I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I accept that water supply is an essential service, not to be terminated or restricted by the landlord. Realistically, however, repairs or replacement of infrastructure do at times necessitate the termination or restriction of an essential service. In such cases, where the termination or restriction of an essential service is beyond temporary, makes the unit unliveable, or is due to negligence on part of the landlord, compensation for the tenant is often warranted.

In this case, I find I was not provided evidence to suggest the landlord was negligent with respect to the re-piping project. Rather, based upon the landlord's undisputed submissions, it would appear the landlord incurred costs and greatly considered the tenants needs in completing this project. Therefore, I have considered whether the termination or restriction of water was beyond temporary or made the unit unliveable, as submitted by the tenant.

I find the best evidence as to the dates the water risers to the rental unit were actually shut off are as submitted by the landlord and supported by the plumbing invoices. Accordingly, I find that the water to one riser was shut off to the rental unit on five different dates in May 2013. I accept that loss of one riser amounts to a restriction of an essential service. However, I find it is important to consider that the restriction was not continuous for five days. Therefore, I find the restriction of water on these separate days, for limited amounts of time during each, to be temporary in nature, especially when balanced with the landlord's need to repair the property so as to avoid future damage to the property.

While I appreciate it is inconvenient for the tenant to ferry water from one place in the rental unit to another in order to cook, wash or flush the toilet, I reject the tenant's position that the rental unit was "not liveable" during days the water was shut off to one riser as the tenants continued to live in the rental unit these days.

Considering the above, I find the tenant did not establish an entitlement to recovery the equivalent of 100% of the rent for eight days, as claimed, and I dismiss that portion of the claim.

With respect to the tenant's claim for loss of quiet enjoyment, the tenant pointed to excessive noise on three specific dates as the basis for the monetary claim. The audio recordings satisfy me that loud drilling noises were heard by the tenant; however, the recordings are less than a minute in duration and I have no evidence to refute the assertion that the drilling was necessary for a short period of time. Therefore, I make no award to the tenant for compensation for unreasonable disturbance based upon the evidence provided to me.

In light of the above, I dismiss the tenant's application in its entirety.

### Conclusion

The tenant's 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: January 17, 2014

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Residential Tenancy Branch

