



# 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 by the tenants for a monetary order. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This tenancy commenced May 1, 2013, as a one year fixed term tenancy and continued thereafter as a month-to-month tenancy. The monthly rent was \$1000.00. The then landlord and the tenants agreed that the deposit of \$1000.00 paid by the tenants was a deposit to be applied to the last month's rent and was not a security deposit or pet damage deposit. No other deposit was paid by the tenants.

A new tenancy agreement between the same parties was signed on April 23, 2014. The new agreement provided that the monthly rent included all utilities.

The rental unit is the upper level of a house. The landlord lived in the unit in the lower level.

In May of 2014 the house was listed for sale. The house sold within of day of being listed. The landlord advised the tenants when the house was listed and when the offer was accepted.

The purchasers testified that they bought this property as an investment property and their intention was to continue renting it out.

Towards the end of May the tenants and the purchasers met and discussed the possibility of the tenants renting the entire house. The tenants' plan was that their daughter, son-in-law and grandchildren would live in the house with them. The tenants

were not satisfied with the purchasers' proposals and a new agreement was not reached.

The tenants found a new place that would accommodate all of them. Before the end of May they signed the tenancy agreement for the new place. The possession date was set for July 1, 2014. On May 31 the tenants gave notice to end tenancy effective June 30 to the landlord.

The purchasers took over the property on June 13 and immediately started a series of much needed repairs. On June 15 the landlords fixed blocked perimeter drains that were causing water to accumulate against the bay window of the lower suite. Part of this repair involved the use of a jackhammer. The landlords did the work themselves and worked until 8:00 or 9:00 pm, on June 15 and were finished before 2:30 pm on June 16.

The new landlords also advised the tenants that the roofers would be starting on Monday morning.

Although the repairs were required the problem for the tenants was that the male tenant works Sunday to Thursday nights as a security guard.

The tenants promptly went to their new landlord and negotiated an earlier move-in dated. The tenants testified that not only did their new landlord allow them to move in early, he did not charge them any rent for June in return for them accepting the place "as is".

There is some conflicting evidence as to whether the tenants were out of the rental unit by June 19 or June 23.

The parties did agree that the tenants returned the keys to the landlords on June 27. They also agree that the deposit paid by the tenants at the beginning of their tenancy was applied to the June rent and that the unit had been left in satisfactory condition.

### Analysis

As explained in *Residential Tenancy Policy Guideline 6: Right to Quiet Enjoyment*:

"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 even if the landlord has made every effort to minimize disruption to the tenant in

making repairs or completing renovations. . . .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.”

Regardless of any efforts by the landlords and the roofers to minimize the noise and disruption the removal of an old roof and the installation of new roofing is a highly disruptive process. So is jackhammering concrete.

I find that the tenants are entitled to compensation for loss of quiet enjoyment of the rental unit from June 15 to June 23 in the amount of \$300.00. (This is calculated as 9 days X \$33.33/day, rounded up to the nearest dollar.)

The tenancy could have continued on the same terms but the tenants choose, for their own reasons, to end the tenancy. If they had moved out at the end of June, they would be entitled to any compensation from the landlord for their moving costs. The tenants have not demonstrated that it cost them any more to move out a couple of weeks early. Accordingly, all claims related to the cost of moving are dismissed.

As the tenants were partially successful, they are entitled to reimbursement from the landlords of the cost of filing this application, \$50.00.

#### Conclusion

I find that the tenants have established a total monetary claim of \$350.00 comprised of damages for loss of quiet enjoyment in the sum of \$300.00 and the \$50.00 fee paid by the tenants for this application and I grant the tenants an order under section 67 in this amount. If necessary, 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: September 02, 2014

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Residential Tenancy Branch

