



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, ERP, RP, FF

### Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord resides on December 22, 2014.

With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a.        Whether the tenant is entitled to an order for repairs?
- b.        Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- c.        Whether the tenant is entitled to a monetary order?
- d.        Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence

The tenancy began on November 1, 2013 when the parties entered into a fixed term tenancy agreement in writing that provided that the tenancy would end on November 30, 2014. The tenancy agreement provided that the tenant(s) would pay rent of \$1000 per month payable in

advance on the first day of each month. The tenant(s) paid a security deposit of \$500 at the start of the tenancy. .

The tenants seek compensation for out of pocket expenses and the breach of the covenant of quiet enjoyment caused by construction work carried on by the landlord on an upstairs suite. The tenant testified the construction work started around the middle of October and did not end until approximately the middle of January 2015. There is some confusion with respect to this evidence as a photograph provided by the tenant shows a text message dated November 19, 2014 complaining the landlord had not given the tenants proper notice. The tenant testified that it appears the construction work is completed.

The tenant seeks compensation for out of pocket expenses and breach of the covenant of quiet enjoyment based on the following:

- The tenant testified there was significant construction noises that interfered with their enjoyment of the rental property for approximately 2 ½ months. The digital evidence produced by the tenant indicates the noise was loud and disruptive at times. The tenants testified there was daily construction noise starting as early as 8:30 a.m. and continuing to 5:00 p.m.
- The tenants have an infant child whose sleep was adversely affected by the construction noise.
- The landlord took away access to the laundry facilities thereby incurring expense for the tenants.
- During the renovations an employee of the landlord broke a sewerage pipe upstairs that was leaking into the tenant's room. This occurred on two occasions.
- The leakage caused the tenant to attempt to treat the problem himself. He left the rental unit for a day while it was being treated. He was unsuccessful and then the tenant hired a contractor to treat the rental unit.
- The landlord's employees attempted to gain access to the rental unit through a doorway between the two properties. The door is not locked and the tenant has placed a sofa to ensure no access is gained.
- The tenant testified he is not receiving his mail and seeks a mail box where he has direct access.

- The landlord's brother has told the tenant that if he does not like the situation he can move out at any time.

The landlord disputes the tenant's claims based on the following:

- The landlord testified the renovations work was not as noisy as alleged by the tenants and took place during the work day. Work was never done on Sundays. The noise problem was for the most part limited to 3 days when tiles were removed.
- The tenant was denied access to the laundry as renovation work was being done in that area.
- The tenants did not ask the landlord during the course of the tenancy to purchase the washing machine. The tenant testified the landlord never returned his telephone calls.
- The tenant did not advise the landlord of the second leak problem. The tenant responded saying he advised the landlord's brother (who is the person he signed the tenancy agreement with).
- The landlord does not understand the basis of the tenants' claims.

#### Analysis:

The tenancy agreement provides that the tenant is to be 38% of the total heat and hydro for the property. The law does not permit the landlord to unilaterally alter this obligation merely because the tenants have a baby.

#### Application for a Repair Order

With respect to each of I ordered the landlord to do the following:

- a. Install a mail box where the tenants can receive their mail directly.
- b. Install a lock on the door between the tenant's unit and the landlord where the tenant can ensure the landlord does not have access.

I further order that the repairs be completed by February 7, 2015.

#### Application for a Monetary order and Reduction of Rent

Policy Guideline #6 provides that unreasonable and ongoing noise is an example of the breach of the covenant of quiet enjoyment. It includes the following statement:

“Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.”

Policy Guideline #16 provides as follows:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Monetary Order & Reduction of Rent:

With respect to each of the tenant's claims I find as follows:

- a. I determined the tenants are entitled to \$20 for the cost of the coin laundry after the landlord wrongfully withdrew the laundry service.
- b. I dismissed the tenant's claim for the registered mail costs as these represent the cost of pursuing litigation. The only jurisdiction an arbitrator has with cost is the cost of the filing fee.
- c. I determined the tenants acted reasonably in purchasing the portable washing machine. The landlord had denied the laundry service. They have an infant. I determined the tenants are entitled to \$424.33 for the cost of the portable washing machine. They are entitled to use it during the course of their tenancy but as they are being reimbursed for it the landlord is the owner of it.
- d. I dismissed the claim for the cost to buy insect spray, disinfect the house and stay in a hotel. The landlord was unaware of what the tenants were doing. The landlord did not agree to it and agree to reimburse the tenants. As it turned out the tenants actions were ineffective as the tenant had to hire a contractor a few days later.

- e. I determined the tenants are entitled to reimbursement of the sum of \$175 which is the cost incurred by the tenant to disinfect the house by a professional contractor where the damage was caused by the leakage in the toilet/sink in the upstairs suite.
- f. I dismissed the claim in the sum of \$44.78 for the cost of DVD and papers, the sum of \$23.52 for the cost to record DVD and using internet for evidence and Canada Post (evidence sent to the landlord as these are claims relating to the cost of pursuing litigation. As arbitrator only has the jurisdiction to award the cost of the filing fee when dealing with the costs of pursuing litigation.
- g. The monetary order worksheet prepared by the tenants alleges their out of pocket expenses totals \$969.06. The total claim filed by the tenants is \$3000. Thus I infer the tenants are seeking \$2030.94 for breach of the covenant of quiet enjoyment.

After considering the disputed evidence of the parties I determined the tenants are entitled to the sum of \$800 for the breach of the covenant of quiet enjoyment based on the following:

- The rent was \$1000 per month.
- I determined the construction noise were severe and significantly affected the enjoyment of the rental property for periods of time the tenants were in the rental unit.
- I do not accept the testimony that tenants that they experienced the long periods of significant construction noises as they allege.
- I determined the leakage from upstairs significantly affected the enjoyment of the rental unit on two occasions.
- The landlord wrongfully denied access to the laundry. However, the tenants solved this problem in a manner beneficial to them by purchasing a portable washing machine (previously the contract allowed them to do their laundry on one day a week).

### Conclusion

**I determined the tenants have established a claim against the landlord in the sum of \$1419.33. I ordered the landlord(s) to pay to the tenant the sum of \$1419.33 plus the sum of \$50 in respect of the filing fee for a total of \$1469.33 such sum may be deducted from future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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 20, 2015

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Residential Tenancy Branch

