



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      CNR, ERP, RP, MNDC, OLC, PSF, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Notice to End Tenancy for unpaid rent; for an Order for the landlord to make emergency repairs for health or safety reasons; for an Order for the landlord to make repairs to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; for an Order for the landlord to provide services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of this application.

At the outset of the hearing the tenant withdrew all aspects of his claim except his claim for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the

requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agreed that this tenancy started on January 01, 2014 for a fixed term tenancy of one year. The tenancy has continued on a month to month basis. Rent for this unit is \$2,470.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that he pays a higher rent for the unit for the views and the privacy afforded to his unit. The tenant testified that in June, 2014 the landlord started construction work on the roof outside the tenant's unit. The tenant acknowledged that the roof was in a poor condition at the time and needed to be repaired. The tenant testified that the repair work to the roof and the creation of the green roof garden has taken a year to complete. The tenant testified that the landlord did not provide information to the tenants affected by the work as to the start and estimated end date of this major project.

The tenant testified that he has been deprived of his view and suffered a loss of quiet enjoyment for his rental unit from June, 2014 to June 2015. The tenant testified that he works at home and construction workers would start work on the roof at 9.00 a.m. until 4.30 p.m. The noise was so loud the tenant had to go and work elsewhere. In November, 2014 the project came to a halt and the roof looked like a war zone. The tenant testified that in February, 2015 the work started again and one or two days a week the landlord had construction workers on the roof and although there was less noise created as they did the garden on the roof there was still a lack of privacy

between April to the end of May, 2015 as there were people on the roof five days a week.

The tenant testified that if he had known in advance about this major project taking place he may not have rented this unit and feels that the work on the roof has significantly devalued his tenancy for a year. Due to this the tenant seeks compensation of \$500.00 a week from June, 2014 to June, 2015.

WL testified that the construction work started on August 25, 2014 not in June, 2014. Everyone in the building knew that the work was taking place and it had been planned for some time.

PS testified that he put up notices in the building informing the tenants that the roof was going to be replaced with a new one and when the work was going to start. No estimated end time was indicated as the landlord did not know how long the project would take.

WL testified that they had to work with various people including the municipality, construction crews and engineers. This was a major project to enhance the roof as a green space. The actual roof construction happened between August 25, 2014 and the end of October, 2014. This project involved ripping up the old roof and laying a new one, changing the drains, the sloop of the roof and ensuring the weight of the new roof project would comply with safety requirements. WL testified that this was essential work to repair the roof and the green garden has significantly enhanced the look of the roof and the view of the tenants. No work could commence on the green roof until February, 2015 as planting could not be done in the winter months. During this time no noise was created and then when the green project started no noise was created. Workers were not on the roof everyday due to the weather and were there for the planting seasons for the various plants being put in. For many weeks there were no workers on the roof; however, the weight of the roof had to be continually tested to ensure safety requirements were met.

WL testified that they were sensitive to all tenants. No one else complained or raised any concerns and work was only completed during the legal hours. WL testified that had the tenant complained to the landlord the landlord would have offered to rehouse the tenant in another unit if one was available or in another building. The tenant only started to complain when the landlord asked the tenant for a pet deposit. WL testified that until then he had no idea the tenant was so unhappy with the project.

WL testified that the tenant called WL and asked for a time when the project would be finished. WL did not know at the time as the planting needed to be scheduled and the roof had to have more weight checks completed. To be helpful to the tenant WL informed the tenant that he was hopeful the work would be completed by the end of April, 2015. As it was it took until the middle of May, 2015. People will still need to come out onto the roof area to maintain the green space and to do additional planting throughout each year the same as any other regular garden maintenance. WL testified that they dispute the tenant's claim for compensation for a year.

The tenant testified that he did not complain about the noise as the tenant thought the work would be completed in a month. When that did not happen the tenant went two more months hoping it would be completed. The tenant disputed the landlord's claim that they put notices in the building. The tenant recalls that the notices he saw were for plumbing and electric work. The tenant disputed that he did not correspond with the landlord until May, 2015. The tenant testified that he had correspondence with the landlord in March, 2015.

WL testified that this was a major project and could not be completed within a month. The landlord had to comply with all safety requirements and there invoices show that the work started in September, 2014 although there were workers there from about August 25, 2014 when the old roof was removed.

## Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's application for compensation for a loss of quiet enjoyment of the rental unit for a period of a year; I refer the parties to the Residential Tenancy Policy Guidelines #6 which provides guidance and clarification on a tenant's right to quiet enjoyment. This guideline states in part that the *Act* establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- entering the rental premises frequently, or without notice or permission;

- unreasonable and ongoing noise;
- persecution and intimidation;
- refusing the tenant access to parts of the rental premises;
- preventing the tenant from having guests without cause;
- intentionally removing or restricting services, or failing to pay bills so that services are cut off;
- forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or, allowing the property to fall into disrepair so the tenant cannot safely continue to live there.

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.

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.

The tenant was unable to provide evidence showing that the construction work on the roof started in June, 2014 and was vague about his recollection of when the work actually started. The tenant did agree that no work was completed between November, 2014 and February, 2015. The landlord testified that the construction work started on August 15, 2014 and continued until the end of October, 2014 and then the garden construction started in February, 2015 until the middle of May, 2015.

I have considered both party's testimony and documentary evidence and I am satisfied that there was construction outside the tenant's unit to repair the roof starting on August

25, 2014. I am also satisfied that this continued until the end of October, 2014. The tenant has the burden of proof in this matter to show the level of noise and how this impacted on the tenant's quality of life and his right to quiet enjoyment of his rental unit. The tenant has described excessive noise and from my experience the replacement of the roof would cause some excessive noise. I must balance the tenant's claim for a loss of quiet enjoyment over the landlord's right to carry out essential work to maintain the building. I must also consider if the tenant informed the landlord in writing of the level to which the tenant was disturbed due to the construction so the landlord could take some action to alleviate the tenant's discomfort.

I find the tenant did suffer a loss of quite enjoyment of his rental unit for the period between August 25, 2014 and October 31, 2014 and that the construction noise did devalue his tenancy to some degree; however, I find the tenant's claim to recover \$500.00 a month to be excessive. The tenant did not inform the landlord in writing of the effect the construction was having on the tenant's life so the landlord could have offered the tenant alternative accommodation in order to mitigate any loss to the tenant. No construction work continued during the period of November, 2014 to February, 2015 and even if the roof did look like a war zone during this period it should not have had a significant impact on the tenancy during the winter period. I am satisfied that the landlord's ultimate plan was to enhance the roof by the creation of a green garden but the work could not be started during the winter period. After February I am not satisfied that the tenant suffered continual disturbances while the garden work was started on the roof that would significantly impact his tenancy.

I must therefore limit the tenant's claim for compensation and find the tenant is entitled to a nominal amount of compensation due to a loss of quite enjoyment between August 25, 2014 and October 31, 2014 to an amount of \$300.00. It is my decision that the tenant has not met the burden of proof that his privacy was significantly reduced due to the construction workers being on the roof and having balanced that against the landlord's right to maintain the roof, no compensation will be awarded to the tenant for a loss of privacy for nine months.

As the tenant's claim has some merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

### Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$350.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order. The tenant may choose to implement the Monetary Order by deducting the amount from future rent.

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: June 22, 2015

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Residential Tenancy Branch



