



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            MNDC

### Introduction

This conference call hearing was convened to address a claim by the tenant for a monetary order. It was originally scheduled to be heard on June 26, but at that time, technical difficulties prevented the parties and the arbitrator from connecting to the conference call. The hearing was rescheduled to July 3 and both parties were in attendance.

### Preliminary issues

At the hearing, the landlord asked to change the named respondent to the corporate owner of the building. The tenant did not agree to this amendment. The definition of "landlord" in the *Residential Tenancy Act* is a broad definition which includes agents. The testimony of the parties at the hearing made it clear that the named respondent has acted as an agent of the corporate landlord with respect to this tenancy and I therefore decline to amend the application to change the name of the respondent.

The tenant's claim for a monetary order included a claim for losses incurred as a result of an alleged chemical spill at the residential property. The tenant commenced a civil action in Small Claims Court against a contractor with respect to those losses and the parties settled the claim in November 2014. The tenant sought to pursue the landlord for compensation for the same losses.

The tenant has alleged that both the contractor and the landlord are liable for his losses as they resulted from the same event. Although the action against the contractor was framed as negligence whereas as against the landlord he claims a breach of a statutory duty, the fact remains that he has recovered his losses from the contractor and cannot recover a doubling from the landlord. I find that the settlement of the tenant's action against the contractor has acted to extinguish this particular claim against the landlord. I advised the tenant of my ruling at the hearing and the hearing proceeded to address only those claims which were unrelated to the alleged chemical spill.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy began on August 1, 2011 and that through at least part of the tenancy, the swimming pool area was under construction. The rental unit is on the third floor of an apartment building.

The tenant claims that the landlord has harassed him. He testified that on September 6, he was taking photographs in support of his Small Claims action and a man who identified himself as the respondent's husband, yelled at him. 3 days later, the landlord's agent served him a letter advising that he would be given a one month notice to end his tenancy if he went behind construction fencing or into the pool room. He further claimed that he was wrongfully evicted on the pretense that a voting shareholder in the family corporation that owns the building intended to reside in the unit. The tenant stated that he has filed an application for dispute resolution specifically seeking compensation as he does not believe the landlord has accomplished what they stated on the notice that ended his tenancy.

The landlord replied that the tenant was found taking photographs in a construction zone and he was asked not to return to that area as it was unsafe.

The tenant claims that on at least 3 occasions, the landlord illegally entered his unit without having given him notice. He stated that he was certain the landlord had entered the unit on July 19, August 27 and September 2 and said that he knew the landlord had been in the unit because the curtains were partially drawn and a neighbour saw the landlord enter.

The landlord testified that they had no record of entry into the unit on those dates and noted that the tenant had not brought complaints to their attention prior to filing his claim.

The tenant claimed that he suffered a loss of quiet enjoyment as a result of a neighbour who occupied a unit on the same floor as the rental unit. He stated that the neighbour had a chronic drinking problem and would often return to her apartment as late as 3:00 a.m., disturbing him in the process. He stated that on one occasion, she "crashed" into his door, prompting him to call the manager who removed her from the hallway. He claimed to have complained to the manager at least a dozen times and testified that the manager told him that they had a thick file of complaints about the neighbour.

The landlord testified that they have no record of complaints against the neighbour and noted that the rental unit was on the opposite side of the building from the neighbour's suite.

### Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. The tenant did not dispute the landlord's allegation that on September 6 he was in an area which was under construction. While the man who confronted the tenant may not have done so in the most professional manner, I am unable to find that this was an unreasonable reaction to finding

someone standing in an area which appeared to be unsafe. Regarding the landlord's written notice that a notice to end tenancy would be forthcoming should the tenant again visit areas under construction, I do not find that this constitutes harassment. Rather, I find that the landlord was under an obligation to keep tenants safe and to advise them if they were found to be breaching expected standards of conduct. As the question of whether the landlord followed through with the intended purposes which they stated on the 2 month notice to end tenancy is the subject of another dispute, I find it inappropriate to deal with that issue in this hearing. I find that the tenant has failed to prove that the landlord harassed him and I dismiss his claim for compensation for harassment.

The tenant claimed that the landlord illegally entered his unit while the landlord denied having done so. In order to succeed in his claim for compensation, the tenant must prove that it is more likely than not that the illegal entry took place. The tenant provided no evidence to corroborate his claim, even though he said a neighbour witnessed at least one illegal entry, and in the absence of corroborating evidence, I find that the tenant has not proven his claim on the balance of probabilities. I dismiss the claim for compensation for illegally entry.

The same holds true for the tenant's claim that he lost quiet enjoyment as a result of the actions of the neighbour. The tenant did not provide evidence to corroborate his claim that the events described actually occurred and as the landlord denied any knowledge of these events, I am unable to find that the tenant has met his burden. I dismiss the claim for compensation for loss of quiet enjoyment.

#### Conclusion

The tenant's claim is dismissed in its entirety.

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: July 08, 2015

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Residential Tenancy Branch

