



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding INGHAM-McALLISTER  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation for damage or loss under the Act.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Is the tenant entitled to a monetary order for compensation under the Act?

### Background and Evidence

The parties agreed that a 2 Month Notice to End Tenancy for Landlord's use of Property was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2015.

The tenant claims as follows:

a.	2 months' rent for not using premise for reason stated	\$564.00
b.	Loss of quiet enjoyment	\$282.00
	<b>Total claimed</b>	<b>\$846.00</b>

2 months' rent for not using premise for reason stated

The parties agree that a 2 Month Notice to End Tenancy for Landlord's use of Property was served on the tenant indicating that the tenant is required to vacate the rental unit on March 31, 2015.

The reason stated in the notice to end tenancy was that;

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or close family member intends in good faith to occupy the rental unit.

The tenant submits that on May 2, 2015, that they took photographs of the residence and there was a fence around the entire block. The tenant submits that a person cannot walk or drive onto the property, mail cannot be delivered and the utilities have been shut off, and the windows and doors have been boarded up. Filed in evidence are photographs.

The tenant testified that the purchaser did use the property for the intended reason as stated in the notice as the purchaser or close family do not intend to live in the premise.

The landlord's agent testified that they purchased the property on March 10, 2015, and they have no control on what the original landlord checks off on the form and in any event there is only one box regarding the sale of the property. The agent stated that they had the property rezoned and the property remains in their possession.

Loss of quiet enjoyment

The tenant testified that the first week of March 2015, that they were woken by chainsaws cutting down trees in their front yard and this went on daily until a dozen or more trees were cut down. The tenant stated that the ongoing daily noise was significant. The tenant stated that a wood splitter and chipper were used and all the wood was left piled on their front lawn. Filed in evidence are photographs.

The tenant testified that they had to keep their outdoor cats in the house as they were fearful that they would get injured or killed. The tenant stated that keeping the cats inside was a constant battle and added extra stress.

The tenant testified that the impact on their quiet enjoyment for the month of March 2015 was significant.

The landlord's agent testified that they are not responsible for any work that took place prior to them taking possession of the property, as their company had permission from the owner to do the work. The agent stated that if the tenant had issued with any noise those concerns should have been provided to their landlord the original owner.

The tenant argued that when they called the landlord's agent about their concerns and when the agent attended to give them their compensation for receiving the notice they were informed that they were no longer acting as the landlord's agent. The tenant stated that they had no one to bring their concerns too. The tenant stated that when they were told of the new contact information for the new purchaser they had trouble getting a hold of them and when they did, they were informed to just drop the keys off at their office and pick up their security deposit.

### Analysis

#### 2 months' rent for not using premises for reason stated

As the meaning of occupy was questioned, I have refer to the Black's Law Dictionary sixth edition for the legal meaning of occupy.

*Occupy. To take or enter upon possession of; **to hold possession of**; to hold or keep for use; to possess; to tenant; to do business in; to take or hold possession.*

[Emphasis added]

The evidence was on March 10, 2015, the purchaser took legal possession of the property. The evidence was that the purchaser kept the property to do further business.

I find the purchaser has met the definition of occupy as defined in the Black's Law Dictionary as the purchaser took possession on March 10, 2015 and continues to hold possession of the property for their own business use. Black's Law Dictionary does not define occupy as to reside or to live. I find the tenant has failed to prove a violation of the Act. Therefore, I dismiss this portion of the tenant's claim.

#### Loss of quiet enjoyment

In this case, the new purchaser had permission to go onto the rental property prior to taking legal possession of the property and removed the trees. While I accept they had permission from the owner, I find it was solely for the new purchasers benefit to do the work earlier, rather than to wait until the tenant's tenancy was over on March 31, 2015. I find to shift the responsibility to the original owner would be unreasonable and unfair.

I accept the tenant's evidence that the removal of the trees had a significant impact on their rights to quiet enjoyment, as the evidence of the tenant was that chainsaws were,

used, and the wood was cut and chipped on a daily basis for the month of March 2015. I find the ongoing noise was a breach of the tenant's rights to quiet enjoyment.

Further, I accept the tenant was also unable to use the property for their pets and had to contain their outdoor cats in the rental unit, which I accept devalued their tenancy.

Further, although the new purchaser was not informed of any complaints, I accept that the transition between the old owner and new purchaser left the tenant in a position that they were unable to have their complaints addressed. However, I find it reasonable that new purchaser should have known that their actions would impact the tenant's tenancy.

Therefore, I find the new purchaser/landlord breached the tenant's rights to quiet enjoyment for the month of March 2015, as it was their business choice to commence work early, rather than to wait for the tenant to vacate the property on March 31, 2015.

Therefore, I find that the tenant is entitled to compensation for the loss of quiet enjoyment. However, the tenant seeks to recover the equivalent of one month rent. I find that amount high as the tenant had full use of the rental unit. I find an appropriate amount for compensation is half the monthly rent as the tenant was unable to use the property for their pets which had to be contained inside the rental unit. Therefore, I grant the tenant compensation in the amount of **\$141.00**.

I find that the tenant has established a total monetary claim of **\$141.00** and I grant the tenant an order under section 67 of the Act in the above noted amount. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

### Conclusion

The tenant's application is granted a monetary in the above amount.

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: October 1, 2015

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Residential Tenancy Branch

