



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlords for the cost of the application.

Both landlords and the tenant attended the hearing, during which the tenant withdrew the application for an order cancelling a notice to end the tenancy for landlord's use of property. The tenant and one of the landlords gave affirmed testimony and the parties were given the opportunity to question each other with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for aggravated damages and loss of quiet enjoyment of the rental unit?

### Background and Evidence

**The tenant** testified that this tenancy began about 10 years ago, with a different landlord. The current landlords took over in June last year. Rent in the amount of \$1,200.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord also has in trust a security deposit in the amount of \$600.00 which was collected by a previous landlord on April 18, 2013. The rental unit is the bottom half of an up and down duplex, and the upper level is also tenanted.

The tenant further testified that the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on February 29, 2016. A copy has been provided, and it is dated February 29, 2016 and contains an effective date of

vacancy of May 1, 2016. The reason for issuing the notice is: "The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant." The tenant paid no rent for April, 2016 and agrees to move out of the rental unit in accordance with the notice.

The tenant further testified that after receiving the notice to end the tenancy, the tenant found out that the landlords did not have all necessary permits. The tenant called City Hall and spoke with someone in the Community Planning department on March 7, 2016 who left a message on the tenant's phone saying that no permits had been issued for the rental address prior to February 29, 2016. The landlords needed an electrical permit which was issued on February 26, 2016, which the tenant learned from the BC Safety Association, but the landlords didn't get the plumbing permit until March 8. On March 15, 2016 the tenant went to City Hall and was told that the landlords needed a construction permit, plans or drawings showing the reconfiguration of rooms and related plumbing and wiring, a building inspection, electrical permit, and smoke detectors would be required in each of the renovated rooms.

The tenant further testified that at the beginning of the tenancy, the previous landlord, who was single and worked full-time, resided in the upper level of the rental house. However, the new landlords rented the upper level to new tenants near the beginning of January, 2016 who were operating a company in England and communicating with people on the English time zone, which is 9 hours ahead. As a result, there were people upstairs walking about during the night, and since it's such an old building, built in 1972, there is no sound-proofing. The tenant is 72 years old and works 2 part-time day jobs, and was not able to sleep for 2 months during January and February, 2016. One of the tenants in the upper level left in March, and hasn't been back and noise has been much less during the night. Between January 3 or 4 to March 6, 2016 noises continued, such as bathroom flushing and walking around.

On December 28, 2015 the tenant learned that the couple was moving in upstairs and asked the landlords to put in sound-proofing, but the landlords refused to do so. The parties exchanged emails and correspondence, and it took the landlords until February 14, 2016 to attend the rental building to assess the situation. Rather than deal with the noise complaints, the landlords served the tenant with the notice to end the tenancy on February 29, 2016 without having all necessary permits in place. The tenants in the upper level pay \$150.00 per month more rent than the tenant does, and the landlords cannot raise the tenant's rent. The tenant feels discriminated against and questions the landlords' good faith to renovate. Further, the landlords intend to change the wiring in the lower level but not the upper level, and the tenants in the upper level are permitted

to stay. The landlords have also provided an invoice from an architectural contractor, however the tenant was not able to find the company in any directory.

The tenant claims loss of quiet enjoyment and double the monthly rent as moving expenses.

**The landlord** testified that due to known noise transfer issues, the landlords' intent was to make the rental unit a smaller 1 bedroom unit. A person who resides in an identical home next door is also an architect who works for an architectural firm, and was hired privately by the landlords to provide drawings according to his own building. He advised the landlords that no construction permits were needed because no weight-bearing walls were being removed, and that the landlords would require an electrical and a plumbing permit. The landlord double-checked with City Hall and learned that the landlords could not do any re-construction because it was an illegal suite and wasn't zoned for that. All the landlords could do was to decommission the suite. The landlord applied for that permit and copies have been provided. The landlords gave the notice to end the tenancy under the belief that no permits other than wiring and plumbing were required.

The landlord further testified that because the rental unit has aluminum wiring, which is considered unsafe according to today's code, the landlord's insurance company will not cover the rental unit. To correct that, the landlords have to remove drywall in the walls and ceiling of the rental unit.

The suite construction in the rental building was done without permits by previous owners, likely in 1981 when it was converted to strata.

With respect to the tenant's claim for loss of quiet enjoyment, the landlord testified that after the previous owner moved out, a new tenant moved into the upper level on July 1, 2015 and moved out at the end of December, 2015. The landlord has provided copies of text messages from that tenant complaining of noises and incidents respecting the tenant in the lower level. The current tenants in the upper level were accepted after interviewing several prospective tenants, because the landlords knew about noise transfer issues, and the new tenants have no children. The husband works over-seas and travels back and forth every 6 weeks or so. They have taken extraordinary measures to reduce noise transfer, such as using head-phones to watch TV, placing tape on squeaky floors, and parking on the road instead of the driveway and making calls from the car. There were continuous complaints and the landlords also tried to map out squeaks in floors, but that didn't work. The landlords consulted with carpenters and trades people, and the only way to reduce the noise is to drop the ceiling, renovate the bottom suite and work upwards.

The landlords' hands are tied with respect to permits and are just trying to fix a problem.

### Analysis

Firstly, with respect to the notice to end the tenancy, I explained to the parties that the *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end the tenancy, or uphold such a notice given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice is in the approved form. I have reviewed the 2 Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlords effective May 1, 2016 at 1:00 p.m., the effective date contained in the notice.

The *Act* also states that if a landlord does not use the rental unit for the purpose set out in the notice to end the tenancy within a reasonable time after the effective date of the notice to end the tenancy, the tenant may apply for double the monthly rent. In this case, I cannot conclude that the landlord will not use the rental unit for the purpose contained in the notice, and considering that the tenancy has not yet ended, it would be premature for me to consider that type of compensation to the tenant.

With respect to the tenant's claim for loss of quiet enjoyment of the rental unit, in order to be successful, the onus is on the tenant to establish that the tenant suffered a loss of quiet enjoyment, that the loss exists as a result of the landlords' failure to comply with the *Act* or the tenancy agreement; and what steps the tenant took to mitigate any damage or loss suffered. I have read the evidentiary material provided by the parties. The tenant testified that the previous owner resided in the upper level and he was a quiet person, however, there is no doubt that the squeaky floors in the upper level were an issue prior to the landlords purchasing the property. The landlords attempted to correct the squeaky floor issue and noise transfer issues, and it was during the investigations to correct them that the landlords learned that the rental unit was an illegal suite and had to be decommissioned. Further, the landlords chose the current tenants in the upper level to avoid noise issues, partly because they had no children, and the tenants in the upper level were spoken to by the landlords. As a result, the tenants in the upper level did whatever they could to minimize noise transfer to the rental unit below. A landlord is required to take measures to ensure a tenant's right to quiet enjoyment isn't breached, and in this case I am satisfied that they did. If a landlord stands idly by and doesn't take some measure to provide quiet enjoyment to a tenant, then the landlord has not complied with the *Act*. In the circumstances, I am not satisfied that the landlords have failed to comply with the *Act* or the tenancy agreement, and the tenant's application for damages for loss of quiet enjoyment is dismissed.

With respect to the tenant's claim that the landlords discriminated against the tenant by choosing the tenant to move out rather than the newer tenants in the upper level, the landlord explained in his testimony that he has to remove aluminum wiring in the ceiling of the rental unit or the insurance company will not cover it. He also explained that in order to complete the work the ceiling needs to be removed and the upper level of the rental house won't be affected, and I accept that.

In the circumstances, I am not satisfied that the tenant has established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and the tenant's application is dismissed.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords effective May 1, 2016 at 1:00 p.m. and the tenancy will end at that time.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

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: April 22, 2016

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Residential Tenancy Branch