



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNL, MNDC, OLC, PSF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute a Two Month Notice to End Tenancy for landlords use of the 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; and for an Order for the landlord to provide services and facilities required by law.

At the outset of the hearing the tenant withdrew his application to dispute the Two Month Notice to End Tenancy as he is vacating the rental unit in accordance to that Notice on September 01, 2016.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The tenant provided documentary and digital evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord 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 under the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?
- Is the tenant entitled to an Order for the landlord to provide services and facilities required by law?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2014. Rent for this unit is \$700.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that on April 04, 2016 the landlord's contractors started to renovate the landlord's bathroom which is located above the tenant's unit. The tenant testified that he works at night and has to sleep during the day but was unable to due to the noise of this construction. The noise continued for two weeks from 8.00 a.m. to 4.00 p.m. The landlord did let the tenant know this was going to take place but did not protect the tenant's right to quiet enjoyment. The construction noise stopped for the following two weeks but the started again for another three days. The tenant referred to his digital recording of this noise.

The tenant testified that on April 09, 2016 the landlord's son came to visit and stomped around the landlord's bedroom for two weeks which also woke the tenant when he tried to sleep. This continued every day for two weeks for around 10 minutes. On July 04, 2016 the landlord's sons were staying and everything was quite until the landlord came home and her sons then came downstairs and started to kick the tenant's wall causing further disturbance.

On April 12, 2016 the landlord shut off the tenant's hot water. The tenant notified the landlord and the landlord put the hot water back on again. On May 09, 2016 this occurred again; however, the hot water was off for three days before the landlord put it back on.

The tenant testified that on April 22, 2016 the tenant came home from work and found the air conditioning was on full blast and the tenant's unit was freezing. This is controlled from the landlord's unit. The air conditioning unit is located outside the tenant's bedroom and is extremely loud. The tenant complained about this to the landlord and was then served the first Two Month Notice. The tenant disputed that Notice and the landlord failed to attend the hearing and the Notice was cancelled. The tenant emailed the landlord after the hearing and told the landlord that this harassment must stop. The tenant moved his bed into the foyer of his unit. On July 24, 2016 the tenant was again disturbed with a pounding on the foyer wall.

The tenant testified that on June 04, 2016 the air conditioning was left on all day. It was so cold inside the tenant's unit that he had to leave. This occurred again on June 27, 2016. On July 29, 2016 the air conditioning was left on for 12 hours leaving his unit freezing.

The tenant testified that on August 01, 2016 the landlord again disturbed the tenant by testing the fire alarms. The alarms kept repeating "test, test, test".

The tenant testified that on February 04, 2016 he woke up to find large ants in his bed and crawling up the walls. These ants appear to live in the walls and the landlord was informed of the ants but did nothing to remove them. The tenant agreed the landlord did supply some ant traps and they were gone after two weeks.

The tenant testified that due to all the issues outlined above the tenant feels he is entitled to compensation from the landlord for harassment and a loss of quiet enjoyment of his rental unit as his unit should be his sanctuary, to an amount of \$3,000.00.

The tenant seeks an Order for the landlord to comply with the Act with regard to protecting the tenant's right to quiet enjoyment.

The tenant seeks an Order for the landlord to provide constant hot water to the tenant's unit.

The landlord disputed the tenant's claims. The landlord testified that she did communicate with the tenant about construction work starting on the bathroom. The landlord realised that this work did disturb the tenant but the construction workers did not start work before 7.00 a.m. and were therefore not breaking any bylaws. The tenant asked the landlord to get the construction workers to start later in the afternoon but this was not possible. The landlord agreed the work took two and a half weeks to complete.

The landlord testified that with regard to her sons making noise; her sons are 10 year old twins and when they wake up they do run around but they are not told to stomp their feet to disturb the tenant they are told to be light on their feet. The landlord's sons could not have banged on the tenant's bedroom wall as the only adjoining wall is located where the furnace, washer and dryer and hot water tank are located so any banging could not have been caused by the landlord's sons. The landlord testified that the wall adjacent to the foyer wall is the landlord's storage unit and the tenant may have heard the landlord moving stuff around in there but not at 7.15 a.m.

The landlord testified that on April 12, 2016 the hot water control may have been bumped affecting the hot water. The landlord was trying to figure out where the dial should be and this was remedied the same day. The landlord testified that she does not recall being without hot water for three days on May 09, 2016 but the control could have

been inched over again. The landlord had to adjust it to find the correct temperature, as this also affected her hot water.

The landlord testified that the air conditioning was put on in April due to a warm spell. The thermostat control is set to 26 degrees and it will only come on when the indoor temperature upstairs reached over 26 degrees. It does not run 24/7 and only kicks in when the temperature goes over 26 degrees, although the fan runs all the time. The landlord agreed that she did not go downstairs to check the temperature of the tenant's unit when he complained about it being freezing.

The landlord testified that the smoke alarm is wired into the house electrical system. The landlord was having problems with the smoke alarm in her hallway and when it beeps the only way to stop it is to press the test button.

The landlord testified that when the tenant informed her that he had ants she gave him four to six ant traps. The landlord called a pest control company and was advised this was the best solution to get rid of them.

### Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The tenant has provided digital evidence recording the noise from the construction during the landlord's bathroom renovation. While this work may have been necessary and a landlord is entitled to maintain their property if this noise disturbs a tenant's right to quiet enjoyment of their rental unit then the landlord should provide compensation to the tenant. I refer the parties to the Residential Tenancy Policy Guidelines #6 which provides guidance on this issue and states, in part, that:

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.

I am satisfied that due to the noise from this renovation work above the tenant's bedroom it caused significant disturbance to the tenant while he was trying to sleep after working nights. This resulted in the tenant having to move his bed from the bedroom to the foyer of the unit and continued for two weeks and then a further three days.

I am also satisfied that the landlord's children caused some disturbances to the tenant. While a tenant must expect some normal living noise when living in a shared home situation the landlord must also ensure that the noise is kept to a minimum.

With regard to the noise from the air conditioner unit, the tenant would have been aware prior to renting this unit that it would be likely that the landlord would use the air conditioner and that the location of this unit could cause some noise. This is deemed to be normal living noise as there is insufficient evidence from the tenant that the air conditioning unit made noise above what can be considered normal for a unit of this nature.

With regard to the tenant's concerns about the loss of hot water on April 12 and May 09, 2016. I find the landlords explanation plausible that the control was knocked which resulted in a lack of hot water from the tenant's unit and that the landlord was able to remedy this on April 12, 2016. I am not satisfied however, that the landlord did not know that the water was off for three days as this also affected her own unit. The landlord did not remedy this situation in a timely manner and therefore the tenant is entitled to some nominal compensation for a lack of hot water for three days.

With regard to the tenant's claim concerning the air conditioning; when the tenant complained about the freezing temperatures in his unit, the landlord should have investigated the tenant's concerns and taken action to remedy the situation. In normal

circumstances when the thermostat is located upstairs and the temperature is regulated by the indoor temperature of the upstairs unit than as basement areas are generally cooler the landlord should have anticipated this and regulated the temperature accordingly. I am therefore satisfied that on at least three occasions the tenant's unit had a temperature which was colder than normal causing the tenant to have to leave his unit. Consequently, I find the tenant is entitled to some compensation for this discomfort and inconvenience.

With regard to the landlord's smoke alarm; the landlord agreed the smoke alarm in her unit was having some issues which resulted in the landlord having to press the test button to turn off the beeping. The landlord should have been aware that this test noise would adversely affect the tenant while he was sleeping and should have taken steps to remedy the issues she had with her smoke alarm to prevent any disturbances. However, I find this disturbance occurred on one day and would not adversely affect the tenant's quiet enjoyment over a longer period.

With regard to tenant's claims concerning ants in his unit; I am satisfied that there was an ant infestation and that the landlord took the necessary advice and provided ant traps to the tenant to resolve the issue. Consequently, the tenant is not entitled to compensation for this issue as the landlord did what was required to remedy the situation.

With regard to the tenant's claim for an Order for the landlord to comply with the *Act* and for an Order to provide services and facilities required by law; As this tenancy is ending I am not required to issue any further Orders; however, I do caution the landlord to ensure she protects the tenant's right to quiet enjoyment of his rental unit and ensures the tenant has sufficient hot water for the duration of the tenancy.

In determining the amount of compensation for the tenant I have considered the extent by which the value of the tenancy has been reduced, I have taken into consideration the seriousness of the situation and the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed. There is

insufficient evidence of intentional harassment by the landlord. I find the tenant's loss of quiet enjoyment due to the construction work and some noise from the landlord's children did devalue the tenancy over a period not exceeding one month. I also find the value of the tenancy was marginally reduced due to the situation with the hot water and the air conditioning. It is my decision that the amount claimed of \$3,000.00 is extreme. I therefore limit the tenant's claim to the amount of \$400.00 for loss of quiet enjoyment due to construction work and \$200.00 for the lack of hot water and for the cold temperatures due to the air conditioning situation.

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$600.00** pursuant to s. 67 of the *Act*. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia 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: August 22, 2016

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Residential Tenancy Branch