



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RR

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1651
- b. An order to allow the tenant to reduce rent for repairs, services, or facilities agreed upon by not provided.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the landlord by mailing, by registered mail to where the landlord carries on business in early May as the landlord acknowledged receipt of the documents. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to a monetary order and if so how much?

### Background and Evidence

The parties entered into a one year fixed term tenancy agreement that provided that the tenancy would start on March 1, 2017, end one year later and become month to month after that. The tenancy agreement provided that the tenant(s) would pay rent of \$1000 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$500 on March 1, 2017.

The tenant testified as follows:

- Her enjoyment of the rental unit was significantly disturbed by a loud ticking noise coming from the plumbing system located in her bedroom. It occurred between 9:00 p.m. and 8:00 a.m. As a result she was forced to sleep on the couch in the living room.
- She advised the landlord the day after she moved in. After about one week the landlord sent in plumbing experts to fix the problem but they were unable to do so.
- Approximately 3 to 4 week later her father was able to fix the problem. He is a contractor working in 100 Mile House. He submitted an invoice #223 dated April 5, 2017 charging \$551.25. This was composed of \$225 for garbage removal, fence, clean up, panels and \$300 for piping (sounds originated from pipes in the wall).
- He also submitted a second invoice in the sum of \$100 dated May 4, 2017 for cleaning. The testified she spent 4 hours cleaning the rental unit.
- The tenant testified that she spent all but 4 days in March sleeping on the couch.
- The tenant testified the rental unit was not properly cleaned.
- She further testified the backyard had garbage in it the landlord promised to remove. The backyard contained dog faeces.

The landlord(s) testified as follows:

- They responded to the noise problem as soon as they were advised by the tenant.
- The previous tenant had not given the landlord notice there was a problem.
- The heating system contractors were hired and made many visits to the property attempting to solve the problem.
- The landlord did not agree to hire the tenant or her father to do the work claimed in the invoices. The work was done without their knowledge.
- The tenant signed off on the in-coming Condition Inspection Report indicating everything was in order.
- The previous tenant did not have a dog or use the backyard.

#### Analysis:

#### **Emergency repairs**

**33 (1)** In this section, "**emergency repairs**" means repairs that are

(a) urgent,

(b) necessary for the health or safety of anyone or for the preservation or use of residential property, and

- (c) made for the purpose of repairing
- (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

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I dismissed the tenant's claim to recover the cost of the invoice rendered by her father in the sum of \$551.15 for the following reasons:

- The landlord did not agree to pay the father. The work was done without the landlord's knowledge and consent. Further, the work was done at a time the landlord had already hired another contractor to do the work.
- The work does not amount to an emergency repair as defined by section 33 of the Residential Tenancy Act as it was not urgent or necessary for the health or safety of anyone or for the preservation or use of the residential property.
- The evidence relied on by the Tenant to support this claim is not satisfactory. Her father did not testify at the hearing. Further, he failed to provide an affidavit or even a written statement. The invoice is dated April 5, 2017 but the invoice number is #223 which is after invoice #222 dated May 4, 2017 for cleaning.
- The tenant failed to provide evidence to confirm that she paid her father.

I dismissed the tenant's claim of \$100 for the cost of cleaning for the following reasons:

- The tenant presented an invoice from her father for this claim although she testified she did the work.
- Section 21 of the Residential Tenancy Act Regulations provides as follows:

**Evidentiary weight of a condition inspection report**

**21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

- The tenant signed off of the Condition Inspection Report that the rental unit was in a satisfactory condition.
- The tenant failed to prove the rental unit was not satisfactorily cleaned.

- The tenant testified she cleaned the rental unit but she relies on an Invoice from her father.

The tenant sought reimbursement of the first month rent in the sum of \$1000 submitting that her enjoyment of the rental unit was significantly reduced.

Section 28 of the Residential Tenancy Act provides as follows:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #6 includes the following

**B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

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### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

**A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations (my emphasis).**

### Analysis

I determined the tenant is entitled to compensation based on the following:

- I determined based on the evidence presented that the ticking sound in the pipes was a significant disruption and resulted in for the breach of the covenant of quiet enjoyment even though the landlord made reasonable efforts to minimize the disruption.
- The disturbances caused the tenant to sleep in the living room for approximately 3 to 4 weeks. She testified she was only able to sleep in her bedroom for 4 days in March.
- I am satisfied the landlord acted reasonably in attempting to fix it.
- The landlord testified the bedroom is 35% of the size of the rental unit and if compensation is to be granted it should be limited to 35% of the rent. The landlord further submits she had the use of the bathroom, kitchen, living room without limitations and that the disturbances occurred for approximately 11 hours of the 24 hour day.
- The tenant disputes this as a reasonable basis for determining the amount of compensation.

The tenant sought reimbursement of the entire month rent. I determined there is no basis for this amount. The tenant failed to provide a more reasonable way of assessing the amount of compensation. I determined that while her enjoyment was reduced she still obtained significant value from the use of the rental unit. In the circumstances I determined the tenant is entitled to the sum of \$300 for the reduced value of the

tenancy as she had the use of most of the rental unit without disturbance and did not have to move out. .

Monetary Order and Cost of Filing fee

**I ordered the landlord(s) to pay to the tenant the sum of \$300.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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 12, 2017

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Residential Tenancy Branch