



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      ERP, OLC, MNDC

### Introduction

This hearing dealt with three joined Tenants' Applications for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for the Landlord to make emergency repairs to the rental property and for compensation for loss of quiet enjoyment of the property and for an order for the Landlord to comply with the Act.

The hearing was scheduled as a teleconference hearing. The Landlord and the Tenants attended.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

At the outset of the hearing the parties confirmed the applicants for file (31017169) have moved out of the rental unit. The Applicants entered into a settlement agreement with the Landlord on April 23, 2018.

The Tenant, Ms. C.J. submitted that she has applied for compensation for a loss of quiet enjoyment for the period of March 1, 2017, until May 31, 2018.

The Landlord submitted that the Tenant named in application (31017169) Mr. O.R.P. was never authorized as a Tenant by the Landlord. The Landlord testified he never

received rent payments directly from Mr. O.R.P. and he never approved him as a Tenant. The Landlord suggested that Mr. O.R.P. should be removed from this proceeding and the Tenant's Application because he was never an approved Tenant.

The Tenant, Ms. C.J testified that Mr. O.R.P. is a touring musician who moved into the rental unit in the summer of 2016. She acknowledged that she never asked the Landlord for permission for Mr. O.R.P. to be a Tenant. She submitted that the Landlord never requires Tenants to get permission. She submitted that Mr. O.R.P. is her permanent roommate.

The Landlord submitted that on April 23, 2018, he participated in a dispute resolution hearing with the Tenant named in application (31017169) Ms. C.J. The Landlord provided the file number for the previous hearing. He testified that the matter involved a claim for a loss of quiet peaceful enjoyment and the Tenant, Ms. C.J. is applying for compensation on an issue that she has already received compensation for.

I have reviewed the decision from the earlier hearing. The Tenants' application includes the names of Ms. C.J. and Mr. O.R.P. The Tenants' Application includes a request for compensation in the amount of \$5,000.00 for damage or loss under the Act, and the details of the Tenants' application indicate they are seeking compensation for loss of quiet enjoyment due to lack of privacy & construction crews working in the suite over a period of 7 months. The Tenants' application provides the following description for the claim of \$5,000.00:

*Loss of Quiet Enjoyment due to lack of privacy & construction crew working in the suite. 2. Roof & Ceiling Removed & Suite Exposed: Simultaneously the roof and the ceiling was removed while roof was being replaced. Rocks and dirt falling into suite 5 days and nights.*

In the Decision for the previous hearing, the Arbitrator writes that the parties reached a settlement as follows:

- a. *The landlord represented for that he intends to use the rental unit for the next 6 months as follow:*
  - *For the storage of materials for the purpose of upcoming renovations to the rental property*
  - *For office use*
  - *The rental unit is being de-commissioned to comply with the demands of the City of Vancouver to reduce the number of rental units in the rental property to two.*
- b. *Based on the above representation of the landlord the tenant withdraws her application to cancel the 2 month Notice to End Tenancy.*

- c. *The parties acknowledge that as a result of the withdrawal of the application to cancel the 2 month Notice to End Tenancy the landlord is entitled to an Order of Possession effective May 31, 2018.*
- d. *The parties acknowledge the tenants are entitled to rights under section 50 and 51 of the Act including the right to the equivalent of one month rent.*
- e. *The landlord shall pay to the tenants the sum of \$3000 in full satisfaction of the Tenants claims set out in this Application for Dispute Resolution including the claim for compensation for problems with the chimney/fireplace, problem with the window/window sills, the removal of a wall between the bedroom, and lack of a roof and ceiling and the tenants release and discharge the landlord from any further claims with respect to these items. The tenant stated she reserves the right to make other claims with other tenants in the building that are unrelated to the above claims and those claims are not part of this settlement.*
- f. *Payment shall be by certified cheque on or before May 15, 2018.*

...

*I order that the landlords pay to the tenants the sum of \$3000 by certified cheque on or before May 15, 2018. All of claims in this application brought by the tenant are dismissed.*

I find that the Tenants' application for the earlier hearing included a claim for a loss of quiet peaceful enjoyment and the settlement agreement included consideration of those issues along with compensation regarding a 2 Month Notice.

I find that Tenant reserved the right to make claims that are unrelated to claims made in their earlier application. I find that the Tenants' claim for compensation in the amount of \$10, 435.00 is for a loss of quiet peaceful enjoyment due to extensive renovations to the unit below for the period of March 1, 2017, until May 31, 2018.

I find that the Tenants current claim for a loss of quiet enjoyment due to renovations below may not be directly related to the previous claim that was considered and discharged; however, it may be a relevant consideration.

I find that the Tenants received compensation of \$3,000.00 in full satisfaction of the Tenants' claims set out in their Application for Dispute Resolution.

In addition, I find that the Tenant Mr. O.R.P. is not a Tenant but rather an occupant or roommate. I find that Mr. O.R.P. has no contractual relationship with the Landlord.

Although the Landlord may have been aware that the Tenant was permitting an occupant to live in the rental unit, this does not make the occupant a Tenant of the Landlord. The Tenant never requested that Mr. O.R.P. be added to the tenancy agreement. I find that there is no jurisdiction to consider the claims from Mr. O.R.P. because he is not a Tenant.

The hearing proceeded on the joined applications of whether or not the Landlord is required to make repairs or emergency repairs to the rental property.

#### Issues to be Decided

- Is the Landlord required to make emergency repairs?
- Should the Tenants claims for a loss of quiet enjoyment be joined?

#### Background and Evidence

The rental property is a building that is more than 100 years old and contains three rental units above and a commercial Tenant below.

The tenancy agreements for each Tenant were not put into writing by the Landlord.

#### Repairs and Emergency Repairs

The Tenants' applications included a request for the Landlord to make emergency repairs to stairs and a railing.

The Tenant, Ms. A.T. provided the following testimony:

- The Landlord completed repairs on the back stairwell approximately two weeks ago.
- The issue concerning hot water is now fixed as of February 2018.
- The issue with the fire alarm sounding off in the hallway has been resolved.
- The Landlord took action regarding the Tenants concern about pest control.

#### Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

I find that it was appropriate for the Tenants to join their applications to deal with their request for emergency repairs.

I find that the Tenants' concerns about repairs to the rental property were dealt with prior to the hearing. There is no need to take further testimony or make a decision on these repair issues as they have been resolved.

#### Joined Applications for a Loss of Quiet Enjoyment

After taking testimony on the repair claims, there was not enough time to hear the joined claims seeking compensation for a loss of quiet enjoyment. The hearing was adjourned. After further deliberation, I have decided it is more appropriate to dismiss the applications before me with leave to reapply rather than scheduling a new hearing.

The Residential Tenancy Branch policy guideline # 6 Entitlement to Quiet Enjoyment is intended help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

*"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."*

I find that any award for a finding of loss of quiet enjoyment depends on a number of factors including the degree to which each Tenant has been unable to use the rental property or has been deprived of the right to quiet enjoyment. Any award will depend on how any interference or unreasonable disturbances may have affected each Tenant.

It is more likely than not that the impact of any interference or disturbance will be different for each Tenant. For example, the Tenant for application 31017169 has already received compensation for an application that included a claim for loss of quiet enjoyment for a period of seven months. The Tenant may not be entitled to further compensation for disturbances from below that occurred in the same time period.

For the reasons provided above, I find it is appropriate to dismiss all three of the joined applications with leave to reapply. The Tenants are at liberty to reapply for dispute resolution with their own separate application.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the repairs to the rental property were made after the dates the Tenants applied for dispute resolution, I order the Landlord to repay the \$100.00 fees that the Tenants paid to make application for dispute resolution. I authorize the Tenants for files 31017180 & 31017175 to withhold \$100.00 from one (1) future rent payment. The Tenant for file # 31017169 applied prior to moving out and is granted a monetary order in the amount of \$100.00.

### Conclusion

The Tenants' joined applications regarding concerns about repairs to the rental property were dealt with by the Landlord prior to the hearing. There is no need to issue an order on these repair issues as they have been resolved.

The Tenants joined applications claiming a loss of quiet enjoyment are dismissed with leave to reapply with their own separate application.

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 20, 2018

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Residential Tenancy Branch