



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## **DECISION AND REASONS**

**Dispute Codes:** *MNDC, FF.*

### **Introduction**

This hearing dealt with an application by the tenant, for a monetary order for compensation and to recover the fee to file this application, pursuant to Sections 67 and 72 of the *Residential Tenancy Act*.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

The tenant applied for compensation in the amount of \$1,500.00 which is the equivalent of one months rent, for loss of enjoyment due to the various problems with the other occupants of the rental unit and repairs to the rental suite, that were not carried out in a timely manner by the landlord.

### **Issues to be decided**

Is the tenant entitled to a monetary order for compensation in the amount of \$1,500.00 due to inconvenience endured during the tenancy? Was the landlord negligent in conducting his duties as a landlord?

### **Background and Evidence**

Based on the sworn affirmed testimony of both parties, the facts are as follows:

The tenancy started on September 15, 2007 and ended on January 31, 2009. The rent was set at \$1,500.00. The landlord assumed the tenancy when the landlord purchased the home in June 2008 and the tenancy continued on. The tenant wrote a note to the landlord on June 03, 2008 and reported several problems with the rental unit which included a leaking refrigerator, some inoperative lights, clogged gutters, a faulty toilet tank float, a cracked glass on the oven door and noisy tenants in the basement.

The letter also stated that over all, the house was “pretty sound” and the tenant’s

biggest concern was the lack of access to the breaker panel, joint use of the hot water and lack of respect from the tenants below.

The tenant has submitted into evidence email correspondence between the two parties. Included were noise complaints dated August 23, 2008, September 13, 2008 and December 28, 2008. The tenant stated that on December 28, 2008, the tenant called the police at 3:00 am and 4:50 am to attend to the noise and partying that was going on in the suite below. The tenant also included into evidence notes written to the landlord on November 27, 2008 regarding the toilet tank, December 02, 2008 regarding the mess left behind by the worker who cleaned out the gutters, December 03, 2008 about the leaking refrigerator and a noisy dog, December 16, 2008 to give notice to end tenancy and December 29, 2008 about pursuing compensation for inaction on the part of the landlord to correct the problems that the tenant was facing.

The tenant also stated that the landlord came by sometime soon after he purchased the property in June 2008 and measured the appliances and advised the tenant that the appliances would be replaced, but failed to do so.

The landlord testified that every time the tenant complained about the noisy tenants below, the landlord spoke with the tenants and requested them to be considerate of the tenant in the suite above. The landlord stated that the tenant below complained of a personal problem between the two tenants and stated that this may have been the cause of the complaints. Regarding the incident on December 28, 2008, the landlord stated that he contacted the police department and was told that there was a record of one visit to the rental unit. The report stated that the other occupant of the rental unit had returned from a party at approximately 3:00 am and that there was no party going on in the lower level of the home at that time.

In response to the tenant's complaint of clogged gutters, the landlord hired a worker to clean the gutters. The landlord stated that the gutters were full of mud and had not been cleaned for a long time prior to the time that the landlord purchased the home. Hence the job of cleaning the gutters took about a week to get done. The worker had to

stop when the outside temperature reached freezing point. The landlord stated that there was a huge quantity of mud in the gutters and it was easier to drop the mud from the top rather than collect and bag. The worker cleaned up after the job, but the tenant complained that the worker did not clean to the satisfaction of the tenant.

The landlord stated that the refrigerator, stove and toilet were all functional and the tenant had their use through the tenancy. The landlord stated that a minor repair to the refrigerator was required and the current tenant uses the same appliances without complaint. The float in the toilet tank was fixed in mid December 2008. The landlord admitted that he measured the appliances with intention of replacing them, but was waiting for good used appliances to become available. The landlord stated that the tenant was not entitled to a claim for compensation for the following reasons: The appliances were in working order and the tenant was not deprived of their use, the toilet was fully functional and the only problem was that the water flowed continuously into the tank, due to a defective float and this was fixed mid December, and finally the landlord addressed every noise complaint that the tenant made, in a timely manner.

### **Analysis**

Under the Act, every tenancy agreement contains an implied covenant of quiet enjoyment. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes. The covenant of quiet enjoyment promises that the tenant shall enjoy the possession and use of the premises in peace, without disturbance and with reasonable privacy.

Frequent and ongoing interference if preventable by the landlord and the landlord stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of unreasonable and ongoing noise and allowing the property to fall into disrepair so the tenant cannot safely continue to live there. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises by the landlord's actions that rendered the premises unfit for occupancy for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

In this situation the tenant's claim alleges both that the landlord's inaction on the requests for repair and the landlord's inaction in allowing the other occupants to bother the tenant had served to devalue the tenancy, thereby creating a loss of use and enjoyment.

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists and failed to take reasonable steps to correct it. In this case the tenant has documented three instances of noise disturbances through the tenancy. In the dispute before me, I find that the landlord spoke with the other occupants upon receipt of each of the tenant's complaints. Given that, according to sworn testimony of both parties, there were three noise complaints over a period of eight months and that the landlord promptly responded to each complaint, I therefore find that the noise disturbance was not unreasonable and ongoing and that the landlord took reasonable steps to correct it.

In regards to the claims relating to the landlord's failure to repair the unit in an adequate and timely manner, I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and 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. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

While the landlord did not attend to the tenant's requests for repair in a timely manner,

the landlord did not allow the unit to fall into such a state of disrepair, that the tenant could not safely continue to live there or even that would significantly interfere with the tenant's use and enjoyment of the unit. I find that the landlord was not in violation of section 32 of the Act. In determining the amount by which the value of the tenancy has been reduced, I must take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises and the length of time over which the situation has existed. In this case, the tenant was able to use the appliances and the toilet for the entire term of the tenancy and therefore I find that during the tenancy the tenant had not been substantively deprived of the use of the premises or its facilities sufficient to warrant monetary compensation for devaluation to the tenancy.

### **Conclusion**

As the applicant has not succeeded in meeting the burden of proof required to prove that monetary compensation is justified under the Act, the tenant's application for compensation for loss under the Act in the amount of \$1, 500.00 is dismissed without leave. The tenant must bear the cost of filing this application.

Dated March 17, 2009.

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Dispute Resolution Officer