

## **Decision**

**Dispute Codes:** MNDC, FF

### **Introduction**

This hearing dealt with an application from the tenant for a monetary order as compensation for damage or loss under the Act / regulation or tenancy agreement, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

At the outset of the hearing the tenant confirmed that he is withdrawing the application for an order instructing the landlord to comply with the Act, as well as the application for an order instructing the landlord to make repairs to the unit, both of which were included in his original application.

Additionally, during the hearing the parties reached agreement that the tenant will vacate the unit no later than 2:00 p.m., November 30, 2009, and that an *order of possession* will be issued in favour of the landlord to that effect.

### **Issues to be decided**

- Whether the tenant is entitled to a monetary order including recovery of the filing fee under the Act

### **Background and Evidence**

While in a letter dated November 30, 2006 from the tenant to the landlord, the tenant states he “has been renting the above property since August 1, 2005,” a written residential tenancy agreement provides that the month-to-month tenancy began on January 1, 2006. Currently, rent in the amount of \$1,200.00 is payable on the first day of the month. A security deposit of \$600.00 was collected on August 1, 2005.

At the hearing the tenant confirmed that the matter which remains in dispute is whether he is entitled to a monetary order as compensation for breach of the right to quiet

enjoyment. In this regard the tenant seeks compensation of \$25,000.00, in addition to recovery of the \$100.00 filing fee.

Section 63 of the Act provides that the parties may undertake to settle their dispute during a hearing. While the parties considered this option, no resolution was achieved.

Documentation submitted by the tenant includes copies of letters he sent to the landlord during the course of the tenancy. In these letters the tenant identifies various of his concerns which include but are not necessarily limited to, lack of adequate heating in the upstairs portion of the unit, water backing up in the laundry room sink, repairs required of a balcony door / fridge & stove, attention required to mould in the unit, a proposed rent increase, in addition to allegations about unreasonable noise and threatening behaviour on the part of the downstairs tenants. These letters are in addition to what the tenant claims were telephone calls to the landlord during which he identified his concerns.

Documented aspects of the tenant's allegations related to the downstairs tenants include the following:

- "our neighbour came and pound [sic] on our door pretty hard and tried to intimidate us by threatening us as well because we contacted you;
- the tenants living in the basement are continuously playing loud music at all hours of the night;
- I have already filed a complaint with the police and I am now asking you to talk or write something to these tenants."

Further, the tenant's documentary evidence includes a character reference from a former downstairs tenant, a letter from a couple who claim to have visited the tenant in which they state their view that heating in the unit is inadequate, and three separate letters from two different neighbours in which concern is expressed about the behaviour of the downstairs tenants.

Documented aspects of the neighbours' allegations related to the downstairs tenants include the following:

- "on more than one occasion, the downstairs tenant(s) have caused such a disturbance that I have been kept awake well into the night and into the early hours of the morning because of the noise generated by the all night parties that continue well into the early morning hours;
- I am fearful of the downstairs tenant(s) as they have already entering [sic] my yard uninvited, and more so, fear that they will attempt to enter / break in to my house;
- the downstairs tenant(s) also make derogatory noises if I walk past them or when I am in my yard;
- loud music and lots of "shouting" can be heard next door at 2:00 or 3:00 a.m."

Finally, the tenant has submitted into evidence a letter from a consulting psychiatrist in which the psychiatrist states, in part:

During June 2009, tenant reported "feeling increased depression and insomnia which appeared exacerbated by extreme noise and disturbance of the peace that he reported by tenants who reside in the same house that he rents."

Documentary evidence submitted by the landlord includes but is not necessarily limited to, a letter from the downstairs tenants in which complaints are made about the tenants who are the applicants in this dispute, a letter from a former tenant in the basement suite in which the former tenant sets out concerns about the allegedly threatening conduct on the part of a particular member of the applicant tenant's family, a letter from a handyman in which he confirms making several repair visits to the tenant's unit, as well as numerous receipts in support of the landlord's assertion that repairs were undertaken in response to reports from the tenant.

Further, documentation submitted into evidence by the landlord includes a copy of a letter dated July 8, 2009 from the landlord to the tenant's wife, which is in response to correspondence that had been sent by the tenant. In this letter the landlord states, in part:

Please be assured that as a landlord I am fulfilling my responsibility of investigating complaints from both parties.

In another letter submitted by the agent who represented the landlord at the hearing, it is stated in part:

Verbal warnings and dialogue regarding the concerns of the [applicant] family were expressed to the basement tenants.

### **Analysis**

Section 32 of the Act addresses **Landlord and tenant obligations to repair and maintain**, and section 33 of the Act speaks to **Emergency repairs**. While correspondence submitted into evidence by the tenant includes concerns expressed to the landlord about things in need of repair, in his application the tenant has not applied for emergency repairs to be undertaken by the landlord. Further, the tenant withdrew his specific application for an order instructing the landlord to make repairs / comply with the Act. Accordingly, matters related to repairs, including allegations that there was inadequate heating, are not presently before me.

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**. Once again, aside from an application to recover the filing fee, the tenant's application centres exclusively around an alleged breach of the right to quiet enjoyment. In this regard, section 28 of the Act provides as follows:

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.

The alleged breach of the right to quiet enjoyment, arises out of the tenant's allegations about the behaviour of the downstairs tenants. Into evidence the tenant submitted three letters he sent to the landlord in this regard: one dated June 30, 2009, another dated July 24, 2009, and yet another which is undated and unsigned.

In support of his allegations, into evidence the tenant has submitted copies of three letters which are written by two different neighbours: two dated July 24, 2009 and one dated September 23, 2009.

Residential Tenancy Policy Guideline # 6 addresses **Right to Quiet Enjoyment**, and provides in part, as follows:

This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promis(es) that the tenant...shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy."

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Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had 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.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he 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 [among other things]:

- unreasonable and ongoing noise
- persecution and intimidation

- **Claim for damages**

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should 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.

The Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord's failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

On application, an arbitrator may award aggravated damages where a very serious situation has been allowed to continue. Aggravated damages

are those damages which are intended to provide compensation to the applicant, rather than punish the erring party, and can take into effect intangibles such as distress and humiliation that may have been caused by the respondent's behaviour.

The full text of the legislation, the Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca/](http://www.rto.gov.bc.ca/)

The periods of time in question which the above letters appear to specifically address, include three months: June, July and September 2009. While the landlord claims to have responded to the tenant's concerns by speaking directly to the downstairs tenants, the number of occasions when this may have occurred has not been documented, and there is no evidence that the landlord ever brought concerns about the conduct of the downstairs tenants directly to their attention in writing.

I have no evidence before me of problematic behaviour on the part of the downstairs tenants over an extended period of time. However, on a balance of probabilities I find that the tenant has met the burden of proving there was a time - limited, albeit not insignificant breach to his right to quiet enjoyment. In the result, I hereby issue a monetary order in favour of the tenant in the amount of 1 month's rent which is \$1,200.00.

As the tenant has succeeded in his application, I also find he is entitled to recovery of the \$100.00 filing fee.

### **Conclusion**

Pursuant to the agreement reached between the parties during the hearing, I hereby issue an order of possession in favour of the landlord effective not later than **2:00 p.m., November 30, 2009**. This order must be served on the tenant. Should the tenant fail to

comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Following from the above and pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the tenant for **\$1,300.00** (\$1,200.00 + \$100.00). Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 6, 2009

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Dispute Resolution Officer