



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNR, MNDC, OLC, PSF, RR, FF, O

Introduction

This matter dealt with an application by the tenant to obtain for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, and to recover the filing fee for this application. As the tenant has since moved from the rental unit she has withdrawn her application to cancel a Notice to End Tenancy for Unpaid Rent, for an Order for the landlord to comply with the Act, an Order for the landlord to provide services or facilities required by law and for an order to allow the tenant to reduce her rent for repairs, services or facilities agreed upon but not provided

I accept the landlord was served with the hearing documents in accordance with section 89 of the *Act*. Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witnesses, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

Both parties agree that this month to month tenancy started in September, 2009 and ended on December 05, 2010. Rent for this unit in a four-plex building was \$950.00 per month and was due on the first day of each month.



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The tenant states she had ongoing issues with two other tenants living at the four-plex. The tenant states she informed the landlord numerous times to resolve these issues as her peace and quiet enjoyment was being disturbed by the actions of these tenants and she was harassed by the other tenants. The tenant claims the landlord told her there was nothing he could do and if she was unhappy then she should just move out. The tenant states the noise and harassment from the other tenants continued and she took photographs to show the landlord and video recordings. The tenant states she contacted the Police on numerous occasions and has provided 11 file numbers for a period from August 02, 2010 to November 29, 2010 for incidents she claims occurred when she had to call the Police to attend at the residence. The letter from the Police states they attended at the residence from July 01, 2010 to December 01, 2010. The tenant is listed as the complainant regarding bylaw noise, neighbour disputes, uttering threats and other complaints. The letter also states no charges or tickets were issued in any of the incidents.

The tenant testifies that one of her neighbours ran an auto repair shop in the drive of the property and had erected a large enclosure to work from. He used power tools and construction tools often till very late at night. The tenant states there were an excessive amount of cars from this work blocking the driveway. This tenant would start cars and bang doors at night and all this noise would wake the tenant and disturb her peace and quiet enjoyment of her unit. The tenant claims she spoke to the landlord about this and sent letters and e-mails requesting that the landlord take some sort of action against this tenant. The tenant claims the landlord failed to do anything.

The tenant claims she suffered harassment at the hands of other tenants when an advertisement was placed on Craig's list advertising her furniture for free. She had to endure many phone calls about this and then contacted the Police. The police were unable to prove who had placed the advertisement so no charges were laid.

The tenant testifies that she had an incident with another tenant who had refused to pay her share of the Hydro costs. One morning the tenant claims this other tenant assaulted her on her way to work after complaining she was cold. The tenant states the police were also called and

the landlord was informed about this incident but would not answer her calls or e-mails. The tenant states she spoke to the landlords' agent and claims he told her he could not understand why the landlord had not dealt with the other tenants.

The tenant testifies that she has suffered verbal assaults from other tenants, she has been unable to park her car on the driveway and the tenant living underneath her unit also disturbed her peace when he was doing some noisy work in his garage late one night. The tenant claims a new tenant moved in beneath her and she smokes marijuana in her unit. The smell from the marijuana filters up into the tenants unit. The tenant states she called the Police again and they warned the downstairs tenant that it was illegal to smoke this substance. The tenant also claims cat faeces has been thrown up onto her balcony and the landlords agent said he did not know what to do about it. The tenant claims the landlords answer to all her complaints is for her to move out she states he also claims that she is harassing him with these constant complaints.

The tenant testifies that she contacted the City Bylaw office in August 2010 concerning the male tenants' activities. She states they sent letters to the landlord, the tenant in question and copies to her. She states they asked her to start taking photographs' and video and at that time a lot of the problems stopped except the verbal abuse. She claims the Bylaw office ordered the other tenant to remove or reduce the size of his tent but this took him until November to comply.

In October, 2010 the tenant testifies the landlord asked her to draft a letter for him to send to the male tenant. She states the landlord told her he had sent this letter but this male tenant continued to do his mechanical work and ignored the landlords' letter.

The tenant seeks compensation for her loss of quiet enjoyment and harassment with the return of her rent for eight months to the sum of \$7,600.00. The tenant seeks to recover a loss of earnings because the stress did not let her heal after surgery and due to being assaulted by a female tenant. She seeks to recover 16 days lost earnings at \$252.00 per day to a total sum of \$4,032.00. The tenant seeks further compensation for personal suffering of \$3,500.00. The tenant seeks to recover the costs of having to move from the rental unit this includes packing



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fees and moving costs totalling \$1,033.20. The tenant also seeks to recover her \$100.00 filing fee from the landlord.

The landlord testifies that before the tenant moved into her unit she knew she would be living in a four-plex with other tenants. Prior to her moving in the landlord states he had received no other complaints from tenants but since this tenant moved in she has complained about everyone. The landlord states he lost one tenant because this tenant kept picking on him and complaining about him.

The landlord states the male tenant does come home late and he does do some car repairs on his own vehicles but the noise is generally everyday living noise from all the tenants and includes outside noises such as the train, boats and road. The landlord testifies that he did tell the tenant to move out if she was unhappy and states he offered to help her find a new place to live.

The landlord states he received complaints about this tenant from his other tenants. One tenant complained that this tenant had turned off her heat and had been stomping on her floor. He claims when he spoke to the tenant/applicant about this she then started complaining about the other tenant.

The landlord testifies that the tenants' photographs show the male tenants cars and his nephews' truck and one other car. He claims she took pictures of every car that turned up at the property. The landlord states when the tenant complained about the male tenant working on cars he told this tenant not to do it and the work stopped. If this work disturbed this tenant so much it would have disturbed all the tenants however only this tenant constantly complained.

The landlords advocate states the tenant had difficulties with social contact with the other tenants and because of this she had a dysfunctional relationship with the other tenants residing there. She claims only this tenant has complained to the landlord about other tenants, whereas all the other tenants have made complaints to the landlord about the tenant/applicant. There has been an occasion when the tenant has tried to provoke another tenant by encouraging him to hit



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her during an altercation. She states many of the tenants claims are of normal living noise including one about a squeaky cart. The landlords advocate states no illegal activities have taken place to disturb this tenant and the landlord has acted upon her legitimate complaints but found no cause to evict any other tenant.

The landlords advocate states this is a case where the tenants do not get on and is therefore between the tenants and should not involve the landlord. When the Bylaw officer came out to the property the male tenant did downsize his tent in keeping with the Bylaws.

The tenant called her witness who states she had been delayed from parking her car in the parking lot by this other tenant and every time she visited the tenant this male tenant was working on cars day and night until 11.00 pm. She states there were cars lined up side by side, this other tenant was swopping car parts, tools were laying round and there appeared to be 5 or six different cars each time she visited. This witness states on the day the tenant was moving out she had to go downstairs to the unit below to ask the tenant there not to smoke pot as it was coming into the tenants' unit. She states she asked them to smoke outside and to turn the music down. This witness states the tenant was very unhappy, she could not sleep and she was afraid of the other tenants.

The landlord cross examines this witness and asks how many times she visited the tenant where she parked her car, how did she know the tenant, did she see the downstairs tenants smoking marijuana and about the noise levels heard. The witness replies she visited three times a week. She had to park in the road, she is a friend of the tenants, she saw marijuana on the downstairs tenants table and the noise levels could be heard over the sound of a movie watched in the tenants unit.

The tenants second witness states she was staying at the tenants unit when she was woken by the sound of a power saw one night at 11.00 pm. Another time she was disturbed by another tenant moving a van and slamming car doors at night. She states she did not see any altercations between the tenant and the other tenants but states the male tenant would stare at

her with a mean look which scared her. She states on one occasion she went out with the tenant. They left the outside light on and when they returned the bulb had been unscrewed.

The landlord declines to cross examine this witness.

The landlords' witness who is the male tenant residing at the property states he has lived at the unit for four years and prior to this tenant moving in there had never been any issues or complaints about him. Since she moved in there has been a barrage of complaints and nonstop harassment by her. He claims she continually complains and has been taking pictures and video of him and any visitors. He states the landlord has spoken to him and has written to him about the tenants accusations but he states her accusations are false.

He states the tenant has problems getting along with other tenants. He states he does own four cars between his and his girlfriends and as they are older cars he does have to do maintenance to them. He also states he has a motorcycle hoppy. He claims he works 10 hours a day away from the home so cannot be making noise day and night as claimed by the tenant.

The tenant cross exams this witness and asks who owns the green and black truck, she asks did the police attend because he had dismantled a fence, did he receive complaints from another tenant who has moved out and did the fire department attend. The tenant also asks if he downgraded his shed. The witness states he does not know who owns the green truck but the black one is owned by the landlords' nephew. He states the police did come out because of the fence but this has been replaced. He states he responded to each complaint raised by the landlord and he did have a complaint from another tenant about some spilt gas. He states the fire department did attend when he was burning some wood to roast marshmallows. When he was informed he could not light fires because of the Bylaws he put it out and has ceased from lighting fires. He also states he has downgraded his shed on two occasions to comply with the Bylaws.

The landlords' second witness another tenant residing at the property states when she moved in she kept herself to herself and was only disturbed by the tenant/applicant who was banging on

her floor. She states the property is peaceful and quiet and she enjoys living there. She claims she had coffee with this tenant once but this tenant did not interact with her as she kept looking out of the window to see what was going on outside. She states there was an incident where the tenant was goading the male tenant and taking pictures of him. She claims the tenant did not get along with anyone and had turned off a new tenant's heat. She states the landlord always attends to her needs and when you live in a building like this you cannot let every sound disturb you such as trains, boats and cars close by.

The tenant cross examines this witness. She asks has the male tenant ever worked on her car, did he connect her cable and did she tell the tenant on move out day that she would have to start taking pictures now. The witness replies, that the male tenant did repair her alternator on her car when it broke down but he did not do any other work on her car. She states her cable was already connected when she moved in to her unit and she denies telling the tenant she would have to start taking pictures now.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witnesses. S. 28 of the Act states: *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*
- d) *Use of common areas for reasonable and lawful purposes, free from significant interference.*

The tenant claims that due to the actions of the male tenant and other tenants residing in the building she has not enjoyed reasonable privacy, freedom from unreasonable disturbances or the use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Policy Guidelines #6 deals with the loss of quiet enjoyment and states in order to proof 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 and of the inaction of a landlord which permits or allows physical interference by an outside or external force which is in the landlords power to control. This means if the landlord stands by while others engage in frequent and ongoing interference this may form a basis for a claim of a breach of the covenant of quiet enjoyment.

The tenant argues that she has lost the quiet enjoyment of her unit due to the actions of the other tenants mostly the actions of the male tenant with ongoing noise late at night while he works on cars on the parking lot. The tenant argues the landlord has done nothing to protect her rights and therefore seeks compensation from the landlord. The landlord argues that he did address the tenants concerns but found they were not justified and so could not take any further action against the alleged offending tenant.

I have taken into account the photographs provided by the tenant in evidence. These pictures do show a number of cars, they show the male tenant working on a cars and vans at night and building a tent like structure on the property. I have considered this evidence and determine that on a balance of probability that the male tenant did cause a disturbance to the tenant/applicant by working on his cars and motor cycles in the common area of the property. I find these disturbances would fall outside the realm of normal everyday noise and did create substantial interference with the ordinary and lawful enjoyment of the premises by the tenant. I find from the evidence presented that the landlord did attempt to resolve this issue but did not enforce the letter sent to the male tenant. The tenants' pictures and video do not show a time line of events, however, the tenants' letters, e-mails, and correspondence with the City Bylaw office and the Police call outs do indicate that these disturbances continued over a period of many months.

Consequently, I find the tenant did suffer as a result of the male tenants' actions and due to the landlords' inability to deal with her complaints and protect her right to quiet enjoyment of her rental unit. These disturbances resulted in her having to move from her rental unit.

With regard to the tenant claim concerning harassment by the other tenants; The *Act* does not allow for disputes between tenants and deals only with a dispute where the landlord had failed



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to take necessary action to protect a tenant's right to quiet enjoyment of their rental unit. When both parties are claiming harassment by the other party I am not satisfied with the tenants' arguments that she has been harassed by other tenants. I find the evidence presented show that the tenant is in part also responsible for some disturbances and her actions towards other tenants has contributed towards the breakdown of the relationships which has led to allegations of harassment on both sides. I also accept the police were called out on numerous occasions by the tenant but no action was taken by them. Consequently, it is my decision that the relationships had broken down between the tenant and the other tenants residing at the property and as such the landlord cannot be held responsible for any bad feelings or altercations that occurred between them as the landlords' duty and obligations are for all tenants.

The tenant has requested compensation in the form of the return of eight months' rent to the sum of \$7,600.00. I find this claim to be excessive in light of the fact that the tenant is also partially responsible for some of the disturbances. However, as I have found that the tenant has suffered a loss of quiet enjoyment due to the male tenants actions in repairing cars late at night I find she is entitled to compensation from the landlord to the sum of **\$2,000.00** pursuant to s. 67 of the *Act*.

The tenant has applied for a loss of wages for 16 days to the sum of \$4,032.00. The tenant has not provided any evidence to show her earnings of \$252.00 nor has she shown sufficient reason to have lost these days from work as a result of stress that contributed towards a medical condition or because she suffered an assault. Therefore this section of her claim is dismissed.

The tenant has also claimed compensation for personal suffering. To the sum of \$3,500.00 as I find the tenant has contributed to her own suffering by becoming involved in altercations with her neighbors this is not the fault of the landlord and therefore he cannot be held responsible to compensate the tenant. Therefore, this section of her claim is also dismissed.

The tenant has applied to recover her moving costs of \$1,033.20. It is my decision that the tenant had to move from the rental unit due to her loss of quiet enjoyment. However, as the



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tenant states she also had to move because of the actions and harassment from other tenants towards her and I have found she is partially responsible for this it is my decision that she is not entitled to recover the full cost of moving. I also find it is not the fault of the landlord that the tenant was unable to pack her own belongings because of a medical condition. Therefore, I find she may recover half her moving costs only from the landlord to the sum of **\$371.00** pursuant to s. 67 of the *Act* and must pay her own packing costs herself.

As the tenant has been partially successful with her claim I find she is entitled to recover her filing fee of **\$100.00** from the landlord pursuant to section 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Compensation for loss of quiet enjoyment	\$2,000.00
Subtotal	\$2,371.00
Plus filing fee	\$100.00
Total amount due to the tenant	2,471.00

Conclusion

I HEREBY FIND in partial favor of the tenants monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$2,471.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants' application is dismissed without leave to reapply.

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: January 11, 2011.

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