

## **DECISION**

Dispute Codes      MNDC, RR, FF

### Introduction

This was an application by the tenant for a monetary order. The hearing was conducted by conference call. The tenant participated as did the landlord's representative. The tenant named the landlord's representative as the landlord instead of the property management company who acts as landlord on behalf of the owner of the strata unit. The definition of landlord under the *Residential Tenancy Act* is broad enough to encompass the landlord's representative as landlord, but it is preferable to name the corporate entity as landlord and the landlord's representative agreed to the amendment of the style of cause to name the company as respondent.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and if so in what amount?

### Background and Evidence

The rental unit is a one bedroom strata title apartment in Vancouver. The tenancy began on October 1, 2010, but the tenant was given possession of the rental unit on September 30<sup>th</sup>. Monthly rent is \$650.00.

Shortly after she moved in the tenant learned that the strata corporation was about to embark upon a project to perform plumbing renovations to the apartment building. The work took place over a period of several months. According to the tenant most of the work was done during the period from October 25, 2010 to November 19, 2010, although there was some brief periods of water shut off beginning on or about October 15<sup>th</sup> and ending in December.

The tenant is a student; she often works and studies at home. She testified that the plumbing work caused a significant disruption to her enjoyment of the rental unit. She had to find other accommodation to work in during the day and she stayed with friends for a good part of the renovation. The tenant submitted photographs of the renovation

work as it progressed. The photographs show that drywall was removed in the rental unit to access plumbing. The tenant's belongings had to be moved to allow access and the work created some mess and dust. Some of her clothing was covered in dust when work was performed in her closet. The tenant claimed that she incurred additional costs because she was not able to cook at home during some of the renovation period. She did not provide any invoices or receipts for additional expenditures.

The landlord's representative submitted that the renovations did not constitute a significant inconvenience that would entitle the tenant to receive compensation and he submitted that other occupants of the building were not compensated for the renovations. The landlord's representative acknowledged that many of the other occupants were the owners of the units they occupied.

### Analysis and Conclusion

Section 28 of the *Residential Tenancy Act*, (Act) provides that a tenant is entitled to quiet enjoyment including, but not limited to rights to reasonable privacy and freedom from unreasonable disturbance. Section 32 of the Act obliges a landlord to keep residential property in a state of decoration and repair that complies with health, safety and housing standards and, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In order to prove an action for a breach of the covenant of quiet enjoyment, a tenant must 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. Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however, a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

I accept the tenant's evidence that the renovations consisting of plumbing and re-piping work had a significant impact on her use of the rental unit for her purposes including daytime work and study for a period of approximately 25 days. I accept her evidence that she often worked at home and the daytime work by contractors rendered the unit unusable for work and study while the work was in progress. I regard this as a

substantial interference with the tenant's enjoyment of the premises that entitles her to an award for loss of quiet enjoyment.

I find that the tenant suffered a partial loss of use and loss of quiet enjoyment of the rental unit for a 25 day period. I award the tenant the sum of \$400.00 for loss of quiet enjoyment. The award is based on the per diem rent rental amount for the 25 day period. I have allowed the tenant approximately 75% of the per diem rent for that period because the loss of use was substantial but was not complete. The tenant is entitled to recover the \$50.00 filing fee for her application for a total award of \$450.00. I grant the tenant a monetary order under section 67 in the said amount. The tenant may request payment of the order, or she may deduct the said amount from a future instalment of rent.

Dated: February 23, 2011.

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