# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes MNDC O FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement, for other reasons and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenants to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on August 19, 2011 to the service address provided by the Landlord. Mail receipt numbers were provided in the Tenants' evidence. Based on the aforementioned I find the Landlord was sufficiently served notice of today's hearing, in accordance with the Act.

The Tenants and their translator appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. I did not hear testimony from their witness. The Landlord did not appear despite being served notice of this hearing in accordance with the Act.

Issue(s) to be Decided

1. Have the Tenants proven they suffered a loss during their tenancy?
2. If so, have the Tenants met the burden of proof to obtain monetary compensation as a result of that loss, pursuant to section 67 of the *Residential Tenancy Act*?

Background and Evidence

The parties entered into a fixed term tenancy agreement that began on August 1, 2010 and ended on July 31, 2011, at which time the Tenants were required to vacate the property. The Tenants affirmed they vacated the property as required by July 31, 2011. Rent was payable on the first of each month in the amount of $890.00. A security deposit of $445.00 was paid and returned to the Tenants at the end of the tenancy.

The Tenants submitted thirty six photos, one CD, and thirty nine pages of evidence, which included, among other things, copies of correspondence between the Tenants and the Landlord which clearly outlines the Tenants' requests for compensation and the Landlord's reasons for refusing their requests. A summary of the Tenants' request for compensations and their testimony provided during this hearing is listed below:

The Tenants affirmed that on approximately August 15, 2010, two weeks after the start of their tenancy, they noticed construction work beginning to be done on their building. They had entered into this tenancy agreement with the Landlord after discussing their needs to have a quiet and sunny location. They have since been told by the building manager that the Landlord had full knowledge of when the building remediation work would begin and what that work would include.

The Tenants are seeking monetary compensation for loss of quiet enjoyment and privacy of $4,900.00 from November 15, 2010 to July 31, 2011 as this is when the work affected their tenancy. Their rental unit was a third floor apartment in a three floor building which was to include the use of a balcony which was approximately 4' x 8'.

The construction work created a lot of noise Monday through Friday from as early as 7:00 a.m. to as late as 5:00 p.m. Although the banging on the building may not have started until later in the day the Tenants stated they were disturbed by construction workers yelling back and forth across the property to each other and transport trucks bringing construction supplies. The Tenant's balcony was removed by the middle of December 2010 and was never put back into use.

In mid March 2011 the Tenants were issued a notice to leave their doors and patio door unlocked for two days while the patio doors were removed and new ones installed. The Tenants did not feel safe leaving their possessions unlocked so the male Tenant lost two days of wages to stay home to keep his possessions safe. At this time their window curtains / blinds were removed and a dark plastic was placed over the windows. This plastic remained during the rest of their tenancy which blocked out the daylight and which they were not able to open and close.

The Tenants advised they also had to deal with the presence of bugs which came in as a result of the construction. They informed the Landlord of the bug presence in mid March 2011 however the Landlord refused to bring in a pest control company and kept delaying until the beginning of July 2011. These bugs had been eating holes in the Tenants' clothing and even though they advised the Landlord of this he continued to delay in getting the unit treated.

The male Tenant confirmed he worked a fulltime and part time job. He worked at his fulltime job from Monday through Friday from 9:30 a.m. to 5:30 p.m. and his part time job Saturday and Sunday 9:30 a.m. to 5:30 p.m. The female Tenant worked and went to school during the day between the hours of 11:00 a.m. and 6:00 to 9:00 p.m. She was home in the evenings, mornings, and on weekends.

Analysis

Given the evidence before me, in the absence of any evidence from the Landlord who did not appear despite being properly served with notice of this proceeding, I accept the version of events as discussed by the Tenants and corroborated by their documentary evidence.

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.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

I accept the evidence before me that at the time the Tenants entered into their tenancy agreement they were not told of the pending construction or building remediation and were led to believe they would have full access and use of the balcony that was attached to the rental unit.

I accept that during the tenancy from November 15, 2010 to July 31, 2011 there may have been times that services or facilities were restricted. Specifically the Tenants lost the use of the balcony for seven and one half months (mid December 2010 to July 31, 2011), and lost the use of the window coverings which opened and closed that were replaced with black plastic for a period of approximately five months (March 2011 to July 31, 2011).

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that "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."

In the absence of testimony from the Landlord, I accept the Tenants' assertion that there were two days where his possessions were at risk when he was instructed to leave his door and patio door unlocked.

From the evidence, I accept the project crew required access to the building and to individual units at different times. I also note that the Landlord chose to provide this access by informing the Tenants to leave their units unsecured and wide open. I am not satisfied that this was the only alternative available to the landlord and/or project crew.

I find that when the residential property is valued somewhat based on its quiet location in an urban centre and the legislation indicates that a tenant is entitled to quiet enjoyment including "freedom from unreasonable disturbance" the right, in this case, is intended to include freedom from unreasonable noise.

I find it undeniable that the tenants suffered a loss of quiet enjoyment, and therefore a subsequent loss in the value of the tenancy for that period. As a result, I find the Tenants are entitled to compensation for that loss.

When considering the amount of compensation the Tenants are due I must, for example, consider that a tenant who worked in a job that required them to be absent from the residential property every week day between the hours of 9:00 a.m. and 6:00

p.m. would be impacted by the daily project activities less than a tenant who was for some reason not able to leave the rental unit for any significant duration during weekdays.

Policy Guideline 6 states: “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”.

As such, I make note that the project work was completed Monday to Friday normally from between 7:00 a.m. and 5:00 p.m. leaving the residential property undisturbed for all evenings, nights and weekends.

I accept the evidence that the Landlord refused to provide pest control services and that there was the presence of bugs in the rental unit from March 2011 to July 31, 2011. Policy Guideline 1 states that a landlord is primarily responsible for the cost of pest control services.

For the reasons noted above, I find the Tenants are entitled to monetary compensation pursuant to Section 67 for the loss of quiet enjoyment, for services or facilities agreed upon but not provided, and for having to deal with the presence of bugs as follows:

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| $160.00 | - | Two days of lost wages to stay in the unit that had to be left unlocked |
| $612.00 | – | Loss of quiet enjoyment for 15 hours per week at 34 weeks ($18.00 per Week x 34 weeks) |
| $575.12 | – | Loss of use of balcony for 28 weeks ($20.54 per week x 28 weeks) |
| $ 52.88 | - | Infestation of bugs from mid March 2011 to the end of June 2011 |
| **$1,400.00** | | **Total compensation due to the Tenants** |

The Tenants have primarily been successful with their application, therefore I award recovery of the **$50.00** filing fee.

Conclusion

The Tenants’ decision will be accompanied by a Monetary Order in the amount of **$1,450.00** ($1,400.00 + $50.00). This Order is legally binding and must be served upon the respondent Landlord.

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: November 17, 2011.

Residential Tenancy Branch