



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNSD, OLC, OPC, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order and an order compelling the landlord to comply with the Act and a cross-application by the landlord for an order of possession. Both parties also sought to recover the filing fees paid. Both parties were represented at the conference call hearing.

On June 1, the tenant amended his claim at the Residential Tenancy Branch to include a claim for an order setting aside a notice to end the tenancy. At the hearing, the tenant advised that he did not serve that amendment on the landlord as he intended to vacate the rental unit. I therefore consider the claim to have been withdrawn. As the tenancy will be ending, I found it unnecessary to address the claim compelling the landlord to comply with the Act and the hearing proceeded to address only the monetary claim.

The landlord's counsel made a preliminary request in advance of the hearing for a court reporter to attend at the hearing to prepare a transcript of the proceedings. The tenant voiced no objection to the presence of the reporter and I permitted the record to be made. Counsel agreed that a transcript would be prepared and a copy provided both to the tenant and to the Residential Tenancy Branch. At the close of the hearing, I advised the parties that I would render my decision prior to receiving the transcript.

At the hearing, the parties agreed that the landlord was entitled to an order of possession effective June 30, 2012.

### Preliminary Issues

The landlord's counsel objected to the hearing proceeding, arguing that the tenant had not complied with s. 59(2)(b) of the Act, which required the tenant to include full particulars of the dispute. Counsel argued that because the claim contained insufficient details, the landlord was prejudiced and could not adequately prepare a response.

The claim identified \$4,900.00 as an amount and in the details of the dispute, the tenant wrote "My unit has been turned into a construction zone for the last 5 months, 9 am – 5 pm 6 days a

week.” [reproduced as written] Counsel argued that the number “5” was illegible and the landlord did not know how the \$4,900.00 figure was broken down or calculated.

The tenant testified that \$4,900.00 represented 5 months’ rent.

I find that the particulars provided by the tenant, while sparse, are sufficient. The landlord’s counsel and witnesses appeared at the hearing prepared to address construction issues which had lasted for some 5 months and I find it unlikely that their preparation would have been different had they known that the figure had been arrived at by multiplying the monthly rent by the number of months the construction had been taking place. However, the tenant’s testimony strayed into anecdotes of specific incidents which could not have been deduced from the particular provided. I find that the landlord has not been given advance notice of any claim save that of inconvenience resulting from construction noise and I have not considered those anecdotes as part of the claim for which the tenant may claim compensation.

#### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

#### Background and Evidence

The rental unit is on the second floor of a multi-floor apartment building. The tenant testified that since December 2011, he has been continually disturbed and lost quiet enjoyment of the rental unit due to ongoing construction in the building.

The tenant stated that construction was undertaken in another part of the building in late 2011 and that a lock was placed on the dumpster, but when the lock was removed in December, he observed a steady stream of workers dumping building materials and street people collecting what they thought might be of value.

He stated that in January, construction began in unit 303, immediately above his unit. He testified that he understood that a full demolition was taking place and that as a result, his ceiling shook, dust infiltrated his unit and he heard significant noise. He stated that he saw a tile saw on the balcony of unit 303 and argued that it was unsafe and unprofessional to use the tile saw on a balcony. The tenant claimed that the work continued daily from approximately 8 a.m. to 5 p.m. and occasionally continued on Saturdays. He stated that he was continually disturbed throughout January and until mid-February when he left the country for several weeks to attend to dying relative.

The tenant testified that when he returned to the unit on March 2, he found that his bedroom window was open and lights inside the unit were on. When he entered the unit, he

discovered a notice of entry dated earlier in the week advising that workmen would be entering the unit to change the electrical panel. The tenant took issue with the quality of work involved with the change of the electrical panel and further stated that it took him 3 days using 2 space heaters to dry out the unit.

The tenant testified that when he returned he found that renovation work had commenced across the hall from the rental unit in unit 211. He claimed that the work was very disruptive and because he had 2 surgeries during this period, he was home more than he usually would have been.

The tenant was very concerned about unsafe practices during construction and particularly concerned that some work was done to remove asbestos, the workers wearing full face and body coverings to perform the work while he was permitted to enter the affected unit with no protection whatsoever. He stated that much of that work was done with the doors of the units open to the hallways. The tenant stated that he works in the construction industry and believed that the work was not being performed by qualified tradespeople. He claimed that in early March, when he reported to the property manager that his window had been left open by a tradesperson, he also mentioned that the construction noise was "brutal".

On cross-examination, the tenant acknowledged that there were other buildings in the area under construction. He acknowledged that he did not record the noises and did not keep a written record of disturbances.

The tenant produced a witness, A.E., who testified that she lives 2 doors down from the tenant and also was subject to unreasonable construction noise from the upper floor and across the hall. She stated that the noise came from hammering and drilling and stated that it was so bad, she could not open her window.

The landlord produced a witness, A.M., who is employed as a labourer with the landlord. He testified that the flooring installed in unit 303 was engineered laminate and that it did not require hammering to install as it clicked into place. He acknowledged that the installation of baseboards involved the use of a nail gun. He stated that while the cabinets were replaced, they were premade cabinets which were attached with screws. He stated that it took no more than 2 days to install the flooring and 2 hours using the nail gun. He stated that when using the tile cutter in unit 211, there would have been 8-10 cuts each day, each cut taking less than 3 minutes.

A.M. testified that there was considerable noise, including the sound of hammering, which came from the construction site across the street and the second site which was half a block away.

The landlord also produced C.L. as a witness. C.L. works as an office administrator and property manager with the landlord and testified that she has been involved in renovations. She testified that the units immediately beside the rental unit were not renovated, renovations taking place in unit 303 and 211. She testified that in unit 303, the only work done was replacing cabinets and flooring and that no tile work was done in that unit, therefore the tile cutter would not have been on the balcony. C.L. stated that there was a complete renovation undertaken in unit 211, which included replacing the flooring, bathroom fixtures and tile. She stated that the tile cutter used for unit 211 was on the balcony which was on the opposite side of the building from the rental unit.

C.L. testified that when she attended the building, she could hear construction noise from the sites across the street and down the block and stated that the tenant did not at any time bring noise issues to her attention.

In cross-examination, the tenant asked C.L. to confirm that unit 302 was also under construction and was directly adjacent to his unit as the floors are tiered. C.L. could not confirm this and testified that work done on unit 302 did not commence until after the tenant had filed his application for dispute resolution.

### Analysis

The tenant's claim was framed in the most general of terms, but it is clear to me and I believe it should reasonably have been clear to the landlord that the claim was to compensate the tenant for disturbance due to construction noise, which amounts to a claim for loss of quiet enjoyment. S. 28 of the Act grants the tenant the right to quiet enjoyment of the rental unit which includes freedom from unreasonable disturbance.

Residential Policy Guideline #6 provides in part as follows:

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

I find that the tenant had an obligation to advise the landlord that his quiet enjoyment of the unit was compromised. I accept that he made a complaint about his window having been left open and the lights left on by a tradesperson, but the landlord denied having been told that he was bothered by excessive noise and as I find both parties to be credible, I am unable to find on the balance of probabilities that the tenant reported his issue with the noise.

Although there was undoubtedly some noise produced by the construction in apartments 303 and 211, I find it very likely that some of the noise complained of was noise produced by the construction occurring on other properties, which noise was outside the landlord's control to

reduce or eliminate. I have arrived at this conclusion based on the testimony of the tenant's witness A.E., who testified that the noise was so loud at times, she couldn't open her window. It stands to reason that if the noise were emanating from within the building, opening the window would not be an issue.

Many of the tenant's issues with the renovations occurring in other suites seemed to centre on his belief that qualified tradespeople were not employed and that the work was substandard. I find that these concerns cannot have affected his quiet enjoyment of his rental unit.

At the hearing, the tenant alleged that the electrical panel in his unit was sloppily installed and testified about his concern that his window had been left open by a tradesperson, requiring him to dry his belongings inside the rental unit. I find that the landlord could not have known that this was part of the tenant's claim through the brief description provided on the application for dispute resolution and therefore I have not considered these issues.

I find that while there was noise occurring during construction, there is insufficient evidence before me to prove that the noise was unreasonable. Section 28 of the Act protects the tenant from unreasonable disturbance and in the absence of persuasive evidence to show that the disturbance was unreasonable, I dismiss the tenant's claim.

### Conclusion

Pursuant to the agreement of the parties, the landlord is granted an order of possession. This order must be served on the tenant and should the tenant fail to comply with it, the order may be filed in the Supreme Court for enforcement.

The tenant's monetary claim is dismissed.

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: June 27, 2012

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Residential Tenancy Branch