



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, CNR, RPP

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Notice to End Tenancy for unpaid rent and for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. At the outset of the hearing the tenant withdrew the application to cancel the Notice to End Tenancy as the tenant testifies that she vacated the rental unit on June 30, 2013.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence however the landlord testifies that the second part of the tenant's evidence was not received by the landlord until July 06, 2013. The tenant's late evidence has not therefore been considered in this decision. All other evidence and testimony of the parties has been reviewed and are considered in this decision.

### 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

The parties agree that this month to month tenancy started on January 23, 2012. There was a verbal agreement between the parties that rent for this unit was \$600.00 per month which includes utilities. Rent is due on the 1<sup>st</sup> day of each month. The tenant ended the tenancy on June 30, 2013 and gave the landlord a forwarding address in writing on July 02, 2013.

The tenant testifies that that the unit had a mud room attached and the landlord started construction in this area taking walls down the first week of April, 2013. The tenant testifies that the landlord informed the tenant that this work would only take two weeks to complete however the work continued as the landlord did not have permits from the City to do this work and the City put a Stop Work Order on the landlord on June 04, 2013. The tenant testifies that as of June 30, 2013 the work was still not completed and the tenant moved from the rental unit because of this and the landlord's behaviour towards the tenant.

The tenant testifies that the landlord also removed a fence in the yard. The tenant testifies that this had left the tenants unit exposed and the tenant lost the security that the fence afforded. The tenant testifies there was also a 10 foot deep hole down to the basement which was not secure where the landlord was doing work on the mudroom. The tenant testifies that she spoke to the landlord about putting the fence back up and the landlord kept saying he would but then became threatening, rude, and swore at the tenant calling the tenant derogatory names.

The tenant testifies that the landlord damaged some of the tenant's property namely a lawn ornament and a garden table. The tenant testifies that the landlord let the tenant put her garden table in the landlord's garage while the work was going on but the landlord later put them back outside and this is when the table became broken. The landlord then moved the table back into the garage again.

The tenant testifies that there were always people outside the tenant's door; the landlord would also rev up his motorbike outside the tenants window, burning rubber and filling the tenants unit with exhaust fumes. The tenant testifies that the landlord lived in the unit next door and would pound on the walls and knock on the tenant's window if the tenant had her television on at 2.30 in the morning because the tenant could not sleep. The tenant testifies that she went to the police about the landlord's behaviour and has provided a police file number in evidence. The tenant testifies that the police went to speak to the landlord and the tenant eventually told the police that she was moving out due to this volatile situation.

The tenant seeks compensation from the landlord equivalent to two months' rent of \$1,200.00 for the loss of quiet enjoyment of her rental unit and the loss of the use of the backyard. The tenant testifies that she always had the sole use of the back yard and the landlord used the garage and the lean to where his trailer was stored. The tenant also seeks to recover moving expenses of \$600.00 to pay for the tenants new security deposit of \$300.00 and pet deposit of \$200.00 plus \$100.00 to pay the people that helped the tenant move including gas for their truck.

The tenant calls her first witness who is the tenant's daughter. The witness testifies that on one occasion the witness was going out with the tenant and the witnesses 20 month old daughter when the tenant said to the landlord she should get some money off her rent due to the construction and loss of fence. The landlord started to chase the tenant and witness down the road yelling and swearing at the tenant telling the tenant to get the 'F' out of the unit and calling her terrible names. The witness testifies that the landlord's language was so bad the witness had to walk away with her young daughter.

The witness testifies that there was a large hole without railings and was dangerous for her daughter to be at the tenants unit so they had to stop visiting the tenant. The witness testifies that there were constant people in and out of the tenant's yard, these were friends of the landlords and they would drink, start yelling and smash bottles

outside the tenant's unit. The witness testifies that she witnessed this going on at around 3.00 p.m. on a couple of occasions when she went to the tenants unit.

The landlord cross examines the witness and asks the witness if these people were partying. The witness responds that they were there every time she went round, no one was ever working, and they were just sitting around drinking.

The landlord testifies that these people were his workforce and if it was hot he would buy them some beer. The landlord agrees that one beer bottle did get broken.

The tenant calls her second witness. This witness is a neighbour of the tenants. The witness testifies that when the tenant moved in everything was going well until the tenant had an attempted break in on September 2012 and then the landlord started construction in April, 2013. The witness testifies that she lives next door and the landlord had informed the witness that this work would only take two weeks. The witness testifies that the landlord's workmen would start work and then drink and then carry on working sometimes until 9.30 p.m. The witness testifies that she called the City concerning this work and the landlord thought the tenant had reported him so the landlord started to get abusive towards the tenant. The witness testifies that she saw the landlord rev up his motorbike and blow smoke into the tenants unit. The witness asked the landlord to stop this but the landlord would swear at the witness and call her foul names. The witness testifies that she saw the landlord being verbally abusive to the tenant telling the tenant to get the fuck out. The witness testifies that the landlord also destroyed the tenant's yard and the flowers the tenant had put in.

The landlord cross examines the witness and asks the witness questions that have no relevance to the tenants claim. The landlord did however ask the witness if the tenant had asked the witness to phone the City to get the landlords construction shut down so the tenant could move out and file a claim against the landlord. The witness responds that this is not true the tenant did not ask the witness to phone the City. The witness

testifies that she choose to do this on June 04, 2013 because the witness was sick of the noise along with the other neighbours.

The landlord disputes the tenants claim and testifies that there was never an agreement about the tenant's sole use of the backyard. The landlord testifies that he parked his RV there and the fence was put up to protect the landlord's property.

The landlord testifies that he had been told that if he was fixing an existing property that he did not need to obtain permits from the City to do so. The landlord testifies that he did not start the work until May 04 and has receipts for the jack hammer used between May 04 and May 08, 2013. The landlord testifies that on one occasion he encountered a problem with the form blowing out and the concrete had to be jack hammered until 8.30 one night. The landlord testifies that he had also hired a bobcat to remove the dirt and concrete and the tenant even commented that the landlord cleared everything up.

The landlord testifies that he had informed the tenant that he would be putting new sod down but when the landlord returned home one day the tenant spoke to the landlord and wanted money back on her rent for the mess and inconvenience. The landlord agrees that he did chase the tenant down the road one day but this was when the tenant had not paid rent and the landlord was asking the tenant for the rent. The landlord testifies that he was just trying to make the house a better place to live in. The landlord testifies that he had already told the tenant that she was not to plant flowers but the tenant do so anyways.

The landlord cross examines the tenant and asks the tenant what moving company did the tenant use. The tenant responds that she used a friend to help her move as she was only moving three blocks down the road and gave this friend \$75.00 for his time and gas. The tenant testifies that they used a truck and wagons to move and the tenant also paid money to feed her movers. The landlord asks the tenant why the tenant feels the landlord should pay the tenants new security and pet deposits. The tenant responds because the tenant had to move due to the landlord's harassment. The landlord asks

the tenant if the landlord had told the tenant that they were done talking after the landlord gave the tenant a 10 Day Notice to End Tenancy. The landlord asks what harassment he gave the tenant. The tenant responds and states the Notice was served on June 04 and they spoke again on June 16 about broken bottles, on June 15 about the revving motorbike and on June 16 about the landlord's motorbikes exhaust in the tenant's home. The landlord asks the tenant if the fence was there to protect the landlord's property. The tenant responds and states the fence was up when the tenant moved in.

The landlord testifies that he tried to improve the property for the tenant and disputes that he spoilt the tenant's quite enjoyment of her rental unit. The landlord testifies that the property is on a corner with traffic going by all day and although the landlord starts his bike up every day the exhaust points towards the road and not the tenant's window. The landlord agrees he did swear at the tenant because the landlord states he was upset at the tenant and the neighbour calling the City. The landlord also agrees that a beer bottle did get broken. The landlord testifies that one of his workers did move the tenants stuff out of the landlord's garage and the wind blew an ashtray over with her umbrella onto the tenants table. The tenant saw this and got upset about this worker touching her stuff. The landlord agrees that he is hotheaded and was upset when the tenant and neighbour got in his face. The landlord disputes that he told anyone that this renovation would only take two weeks. The landlord agrees that the yard is now a mess because he is doing the renovation. The landlord disputes that he broke a garden ornament belonging to the tenant. The landlord suggests the tenant did this when the tenant was weed whacking one night.

The landlord agrees there was a hole without a railing but testifies that after seeing the tenant standing by the hole the landlord then put up a railing. The landlord agrees the tenant would have been inconvenienced a little but with the exception of one occasion the tenant always had access to her unit.

The tenant has provided two CD discs containing evidence. The disc with the video evidence could not be viewed by the Arbitrator or the landlord due to a fault on the disc.

The tenant seeks to amend her claim to include the recovery of the security and pet deposit.

### Analysis

I have carefully considered all the admissible evidence before me, including the sworn testimony of both parties. With regards to the tenants claim that the landlord disturbed the tenants quiet enjoyment of the rental unit; I refer the parties to the Residential Tenancy Policy Guidelines # 6 which deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. This guideline provides guidance to the parties concerning this matter and states, in part, 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. The *Act* establishes the right to quiet enjoyment, which includes, but is not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

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. One of the examples of interference by a landlord includes persecution and intimidation.

The guidelines does state that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment and 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.

However, substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable. 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.

Having considered the evidence and testimony of the parties I find the tenants evidence to be more compelling in substantiating the tenants claim that the landlord started this renovation project without obtaining the correct permits; and was subsequently shut down by the City. This work left the tenant in a vulnerable position considering the scope of the work and the safety arrangements that the landlord did not put in place from the outset. I further find the noise and the landlords workforce drinking on site would also result in a loss of quiet enjoyment for the tenant along with the disruption to the tenant's enjoyment of the yard with the debris from this work in place. While I recognize that had the landlord not been shut down by the City that this work could have been completed within a shorter time scale; as this was the landlord's responsibility to ensure necessary permits had been obtained prior to starting the work this is certainly not the fault of the tenants and the tenant suffered because of this.



I find the tenants and the tenants witnesses evidence is also more compelling considering the tenants claim that the landlord swore at the tenant and called the tenant derogatory names; by landlords own admission that he is a “hothead”. I find that the landlord was not respectful of the tenant’s right to quiet enjoyment through this infliction of mental suffering and intimidation.

Considering the tenants evidence I must also find the tenants verbal testimony that the landlord was not respectful of the tenants garden furniture and this became broken as a result of the landlords actions in removing it from the landlords garage after the landlord had allowed the tenant to store it there to also carry more weight. However I have no evidence that the landlord is responsible for the broken garden ornament.

Having considered all the evidence and testimony I find it is also likely that the landlord did reeve his motor bike up in front of the tenants unit, there are tire tracks shown on the pathway in the tenants photographic evidence which are likely to have been caused by the landlords motorbike and whether or not this created fumes in the tenants unit is unknown; however, by taking this action the landlord is also shown to have broken the covenant of quiet enjoyment for the tenant and I find consider this to be intimidation of the tenant.

Due to the landlords actions I find the tenant had to find alternative accommodation rather than remain in the rental unit with this unfinished construction and the actions of the landlord towards the tenant. I therefore find the tenant is entitled to some compensation for the loss of quiet enjoyment of her rental unit.

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.

The tenant has applied for an amount equivalent to two months' rent of \$1,200.00.

While I have no evidence from the tenant as to an amount to replace the garden table, I find the tenants claim will succeed in part. The tenant did have use of her rental unit if not the yard during this period even if this use was mired by the landlord's actions. I therefore find the tenants claim must be limited to reflect the use the tenant did have of the rental unit and therefore I reduce the tenants claim to an amount that is more appropriate. The tenant is therefore entitled to a Monetary Order to the amount of **\$1,000.00** for a loss of quite enjoyment.

With regards to the tenants claim to recover moving costs of \$600.00 which includes a claim for the tenants security deposit of \$300.00 and pet deposit of \$200.00 at the tenants new rental unit and \$100.00 to pay the people who helped the tenant move including meals and gas for those people. The landlord disputes the tenants claim in this matter. I have considered the tenants claim and find a landlord cannot be held responsible for a tenant's security and pet deposit at the tenant's new rental unit. This is a matter between the tenant and her new landlord even when this landlord has not yet returned the tenants security deposit. I also find a party making a claim must provide some documentary evidence to corroborate the claim such as a receipt showing how much was paid to the people helping the tenant move or for the gas used, or meals provided. Without this evidence the tenant has not met the burden of proof regarding this section of her claim that \$100.00 was paid to move out. I therefore dismiss this section of the tenants claim without leave to reapply.

With regard to the tenants claim for a rent reduction due to a loss of a facility, The tenant claims the landlord removed a fence in the yard which afforded the tenant some security in her rental unit. The landlord claims that the fence was there to protect the landlord's belongings. Having reviewed the evidence and testimony I find the landlord did remove part of a fence however as the unit is open at the front I am not sure if this

removal of the fence devalued the tenancy or effected the tenants security in her unit. I further find as the landlord was attempting to do some construction work this fence was taken down to allow some access. I therefore find the tenant has insufficient evidence to support this section of her claim and this section is dismissed without leave to reapply.

The tenant had originally applied to recover the security deposit however at the time of applying the tenant was still residing in the rental unit and so withdrew that section of her claim. At the hearing the tenant verbally requested that I deal with the security deposit however as no claim has been made at this hearing for the security deposit as it has been withdrawn on the tenants amended application I cannot deal with this matter in this decision. The tenant has provided a forwarding address to the landlord and therefore the tenant is at liberty to file an application concerning the security deposit pursuant to s. 38 of the Act.

### Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for **\$1,000.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

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: July 17, 2013

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Residential Tenancy Branch

