



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a 10 Day Notice to End Tenancy for unpaid rent; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlords, was done in accordance with section 89 of the *Act*; served by registered mail on July 08, 2014. Canada Post tracking numbers were provided by the tenant in sworn testimony. The landlords were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlords, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

### Preliminary Issues

At the outset of the hearing the tenant advised that he is no longer residing in the rental unit and vacated the unit on July 29, 2014. Therefore, the tenant's claim to have the 10 Day Notice to End Tenancy set aside no longer has any merit and is dismissed.

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 tenant testified that this tenancy started on September 01, 2013 for an initial fixed term of six months which reverted to a month to month tenancy. Rent for this unit was \$1,000.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that that for the duration of the tenancy the tenant was continually disturbed by two different neighbours. These neighbours were extremely loud and created disturbances which affected the tenant's right to quiet enjoyment of his rental unit. One tenant erected a gazebo type tent about 12 feet by 12 feet that was directly in front of the tenant's living room window. That tenant had an exhaust fan in this tent which blew smoke from cigarettes and marijuana directly into the tenant's unit. This tenant also had a flat screen TV, a surround sound system, a sub woofer, games consol and a table saw and welding equipment in the tent. That tenant played video games, music or watched TV loudly everyday and also conducted some kind of welding and sawing work using the power tools while that tenant did work on his truck. That tenant continually smoked cigarettes and marijuana and the tenant testified that he also sold marijuana to others from this tent. The noise from this tenant would often go on from 7.00 a.m. to 2.00 a.m.

The tenant testified that he had to call the police because of the noise and drug dealing many times but was always told that the landlords had to resolve the matter. The tenant testified that the landlords would not respond to the tenant's complaints so the tenant put it in writing in the hope that the landlords would take this matter more seriously.

The tenant testified that things escalated in March, 2014 when the tenant had approached the other tenant with a letter informing the other tenant that he was being inconsiderate and conducting illegal activities. That tenant was asked to take down the tent. When the tenant got this letter he throw the letter and started to hoot and holler at the tenant. At first he did start to take down the tent put then changed his mind and approached the tenant as he was standing by his truck door. That tenant started to put his hands through the tenant's truck window and so the tenant pushed him back. At this point the other tenant pulled out a knife and said he would put it in the tenant's back and he would get the tenant when the tenant wasn't looking.

The tenant testified that he called the police again and made a police report. The police did go and talk to the other tenant. The tenant testified that he also tried to contact the landlords on different phone lines but received no response until about a week later when the male landlord came to the tenant's door and asked if the washer/ dryer were fine. The tenant testified that the tenant had had issues with the washer/ dryer previously and despite the tenant having left panicked messages about the knife incident with the other tenant the landlord was only concerned about the washer/dryer. The tenant testified the male landlord asked if everything was cool, so the tenant challenged the landlord and told him again that everything was not fine and the neighbour was selling and using drugs and disturbing the tenant. The landlord asked the tenant what the tenant wanted the landlords to do. The tenant testified that he again told the male landlord that he wanted the tent removed. The tenant testified that the male landlord did go and speak to the other tenant and that tenant came and said the tent would be coming down.

The tenant testified that the other tenant did not remove the tent and as the weather was getting warmer the tenant had to have his windows open to cool his unit and the noise from the tent outside escalated. The tenant testified that there was another altercation with the other tenant on June 30, 2014. At that time the tenant testified that he was on the phone and could not hear the conversation due to the noise from the other tenant's tent. The tenant testified that he went outside to talk to the other tenant

and was approached by the other tenant's girlfriend who started to complain about the tenant's dog's feces. The tenant testified that he told the other tenant's girlfriend that the dog feces was not a problem but the tent was and that the other tenant had to take it down. The other tenant's girlfriend started to get very loud and rude towards the tenant. As he started to go back inside his own unit he shouted to the other tenant to take his tent down. At that point the other tenant came over onto the tenant's property and started screaming and swearing and poking the tenant in the chest. An argument ensued and the other tenant started to make threats against the tenant, his dog and his truck. The other tenant approached with his fists raised and a fight broke out between the tenants as the tenant had to defend himself by not letting the other tenant get too close due to the previous incident with the knife. The other tenant kicked the tenant's dog in the face and hit his own girlfriend who was trying to pull him away.

The tenant testified that they both went back into their own units and the tenant called the landlord and the police again. The police arrived and informed the tenant that he had not acted illegally as the other tenant had entered onto his property. The police advised the tenant to call the City bylaw office about the tent. The tenant was told by the City that it was the landlords' responsibility to have the tent removed. The tenant testified that when he informed the male landlord the male landlord simply laughed at the tenant and told the tenant that this was all fun for him to watch how things played out.

The tenant testified that another neighbouring tenant also played her music very loudly sometimes all night until 6.00 a.m. or 7.00 a.m. The tenant also complained about this tenant to the landlords; however, testified that they were eventually able to resolve it between themselves. The tenant testified that the landlords have never helped resolve these issues or protected the tenant's right to quiet enjoyment.

The tenant testified that due to the landlords' breach in protecting the tenant's right to quiet enjoyment the tenant seeks to recover the rent paid of \$11,000.00 for the 11 months of the tenancy. The tenant also seeks to recover \$120.00 for one and half

months fees for putting his belongings into storage; \$50.00 for the rental of a trailer to move his belongings from the rental unit to storage and \$30.00 for locks for the storage unit. The tenant seeks a further amount of \$1,800.00 in compensation for being forced out of his home and having to live in camp grounds outside of the area. The tenant testified that while he was living in the area he had just graduated from university and was seeking work in the area. As he could not stay in the area he was forced to look for work elsewhere in British Columbia.

### Analysis

The landlords did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlords, I have carefully considered the tenant's documentary evidence and sworn testimony before me.

With regard to the tenant's claim for compensation for a loss of quiet enjoyment of the rental unit; I refer the parties to the s. 28 of the *Act* which states:

### **Protection of tenant's right to quiet enjoyment**

**28** *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 subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Policy Guidelines #6 provides further guidance in this matter and states, in part, that every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however, a written provision setting out the terms in the tenancy agreement pertaining to the provision of quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has 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. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of unreasonable and ongoing noise and persecution and intimidation. 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.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord fails to take reasonable steps to prevent such conduct by other tenants. A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Having reviewed the documentary evidence before me and the tenant's undisputed testimony; I am satisfied that the tenant suffered a loss of quiet enjoyment of his rental unit due to the actions of his neighbouring tenant who erected a tent style gazebo outside the tenant's window which not only restricted the tenant's light and view from the window but the level of noise from that tent and the smoke from cigarettes and marijuana also significantly disturbed and affected the tenant's rights under s.28 of the *Act*.

I am also satisfied that the tenant did inform the landlords of the issues he was experiencing and the landlords would have been able to clearly see that this tent had been erected in front of the tenant's windows. I find the male landlord was made aware of noise from both this tenant's tent and another neighbouring tenant and stood idly by allowing these neighbouring tenants to cause significant disturbances often late at night and in the early hours of the morning. I further find that despite two altercations between this tenant and the male neighbouring tenant the landlord still failed to step in and met his obligations to protect the tenant's rights. A tenant should not have to be threatened by another tenant or attacked on his rental property without the landlords taking action against the offending tenant. I therefore find the landlords have breached the covenant of quiet enjoyment for the tenant and as such the tenant is entitled to some compensation from the landlord.

In determining the amount of compensation I must first determine the amount by which the value of the tenancy has been reduced, and take into consideration the seriousness of the situation and the length of time over which the situation has existed. The tenant resided in the rental unit for 11 months, the tenant has provided some evidence of letters sent to the landlords complaining about noise and the other tenants tent; however, I find the tenant has an equal responsibility to mitigate any loss by taking some action sooner by filing a claim against the landlords for an Order for them to comply with the *Act* or seeking compensation earlier on in the tenancy for a loss of quiet enjoyment. The tenant's failure to take action against the landlords sooner does not necessarily diminish the tenant's rights but I find the amount claimed of \$11,000.00 in

rent paid to be extreme as the tenant still continued to reside in the unit for 11 months. I therefore find compensation of \$300.00 per month to be a more realistic amount. It is therefore my decision that the tenant is entitled to a monetary award of **\$3,300.00** for the loss of quiet enjoyment.

With regard to the tenant's claim for \$120.00 for storage costs, I am satisfied that the tenant ended the tenancy due to the landlords' breach of the covenant of quiet enjoyment. I therefore find the tenant has established a claim for storage costs for his belongings while the tenants sought alternative accommodation; however, I am not satisfied that the tenant has met the burden of proof regarding the actual costs incurred or that the tenant has been actively seeking alternative accommodation as the tenant appears to be camping in various sites in BC rather than looking for work or accommodation. I therefore limit the tenant's claim to \$60.00 for storage costs. With regard to the tenant's claim to recover the costs incurred to rent a trailer to remove his belongings from the unit; the tenant has provided insufficient evidence that he did rent a trailer such as an invoice or receipt. I therefore find the tenant has failed to meet the burden of proof in this matter and this section of his claim is dismissed.

With regard to the tenant's claim for \$30.00 for a lock for the storage unit, I find the tenant has insufficient evidence to show that a lock has been purchased or that the lock was \$30.00. I therefore find the tenant has failed to meet the burden of proof in this matter and I dismiss the tenant's claim for a lock.

With regard to the tenant's claim for \$1,800.00 for having to leave his home and live on campsites in BC; While I accept that the tenant was entitled to end his tenancy due to the landlords' breach of the covenant of quiet enjoyment I am not satisfied that the tenant has mitigated his loss by seeking alternative accommodation in a timely manner. The tenant has been adequately compensated for the landlords' breach and therefore it is my decision that no further compensation will be awarded. This section of the tenant's claim is therefore dismissed.



As the tenant's claim has some merit I find the tenant is entitled to recover the **\$50.00** filing fee from the landlords pursuant to s. 672(1) 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 **\$3,350.00** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order the Order may be enforced 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: September 10, 2014

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Residential Tenancy Branch

