

# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing and Social Development

## DECISION

### **Dispute Codes:**

OLC, MNDC, FF

### **Introduction**

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing. Both parties gave affirmed evidence and this Hearing proceeded on its merits.

### **Issue(s) to be Decided**

This is the Tenant’s application for a monetary order for compensation under the Act, an order that the Landlord comply with the Act, and to recover the filing fee from the Landlord for the cost of this application.

### **Background and evidence**

The parties agreed on the following facts:

- The Tenant served the Landlord with the hearing package by delivering it to the Landlord’s place of business, on January 20, 2009.
- The tenancy started in October, 2006.
- The rent is \$864.00 per month and is payable on the first of the month.

### Tenant's evidence

The Tenant testified as follows:

- From October of 2007, when a new tenant moved into the suite above her, until February of 2009, there have been numerous nights when she and her daughter can not sleep due to the loud music and noises coming from the rental unit above her. These noises usually start late at night, after 11:00 p.m., and continue for a few hours, until 1:00 a.m. or 2:00 a.m.
- In addition to the loud music late at night, the Tenant is awoken early in the morning with loud thumping on her ceilings, shouting and banging of doors. These noises usually commence at 6:30 in the morning and continue for a couple of hours.
- The first few times this happened, the Tenant went to speak with the upstairs tenant about the noise. The upstairs tenant was very rude to her, and responded to her concern by turning up the volume and making even more noise.
- The Tenant started phoning and writing to the Landlord, complaining about the noise. The Landlord advised her to call the caretaker and register her complaint. She has made 25 calls to the Landlord or caretaker, and has written 10 letters to the Landlord over the past 15 months.
- There have been four or five different caretakers since the noise complaints began, and only one of them returned her call, on May 2, 2008. The excessive noise continued.
- The Tenant made an application in August, 2008, to move to a different suite in the rental property, but nothing has become available to date.

The Tenant entered into evidence 8 letters she wrote to the Landlord complaining of late night and early morning noise from the upstairs tenant. These letters were written with respect to noise coming from the upstairs tenant, as follows:

Date of letter	Date(s) of Noise incident
Undated	October 4, 2007
October 21, 2007	October 21, 2007
January 15, 2007 (2008)	on-and-off for 6 weeks prior to Jan 15/08
February 22, 2008	February 20, 2008
May 28, 2008	May 24, 25 and 26, 2008
June 5, 2008	June 3, 2008
September 25, 2008	on-and-off for 4 weeks prior to Sep 25/08
December 31, 2008	December 12, 24, 25, 26, 27, 28 and 30, 2008
January 15, 2009	January 15, 2009

The Tenant entered into evidence hand-written notes of telephone calls that she made to the caretaker of the rental property complaining about the upstairs tenant's noise. These calls were made on October 5, 2007; December 24, 2007; January 20, 21 and 29, 2008; April 7, 9, 13 and 15, 2008; May 2, 8, 10, 2008; and October 7, 10, 12, 13, 16, 2008.

#### Landlord's evidence

The Landlord's agent testified as follows:

- The Tenant did not provide her with copies of the 10 letters of complaint, however, the Landlord's agent stated that the 10 letters were on the Tenant's file in the Landlord's office and that the Landlord did review the letters.

- Not all of the Tenant's letters were followed up, but some phone calls were made.
- The Landlord does not investigate complaints from a single source. Some people have more sensitivity to noises than others. The Tenant should be dealing directly with the upstairs tenant, advising her that the noise is disturbing her and asking the upstairs tenant to keep the noise down. If the noise is disturbing the Tenant, the Tenant can ask for a transfer to another rental unit.
- The Landlord asked the caretaker to monitor the noise coming from the upstairs tenant's suite, but there was no appreciable noise during daytime hours. No attempts were made to investigate noise levels in the late evening or in the early hours of the morning.
- The Landlord received a complaint from another tenant about excessive noise coming from the upstairs tenant on September 4, 2008.
- The Landlord received a complaint from a contractor working on site at the rental property on January 20, 2009 regarding possible illegal activity at the upstairs tenant's suite.
- The Landlord issued warning letters to the upstairs tenant on October 9, 2007, September 5, 2008 and January 20, 2009.
- The Landlord issued a One Month Notice to End Tenancy for Cause on January 22, 2009, to the upstairs tenant. The Landlord stated that the reason for issuing the Notice to End Tenancy was not because of the Tenant's complaints of excess noise, but for the contractor's complaint about possible illegal activity.

The Landlord entered into evidence: a copy of the noise complaint from the other tenant, dated September 4, 2008; a copy of the first and second warning letters to the upstairs tenant, dated October 9, 2007 and September 5, 2008; a copy of the complaint from the contractor dated January 20, 2009; a copy of a letter dated January 20, 2009, from the Landlord to the upstairs tenant; and a copy of the Notice to End Tenancy for the upstairs tenant dated January 22, 2009.

### **Analysis and Decision**

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including freedom from unreasonable disturbance. I accept the Tenant's testimony that at least 36 complaints of excess noise were made to the Landlord, or to the Landlord's caretaker, in a 15 month period. I accept the Landlord's and the Tenant's testimony that only one letter of warning was issued to the upstairs tenant regarding the Tenant's complaint of October of 2007. No further steps were taken by the Landlord despite the Tenant's letters and phone calls, and the excessive noise continued for 15 months.

Section 7(1) of the Act provides that if a landlord does not comply with this Act, the non-complying landlord must compensate the tenant for damage or loss that results.

The Landlord has not complied with the Act by failing to provide the Tenant with quiet enjoyment of the rental unit after the Tenant made numerous complaints. The Tenant followed the Landlord's directions and attempted to mitigate her loss of peaceful enjoyment, by speaking to the upstairs tenant and by alerting the Landlord and the caretaker on numerous occasions about the excessive noise.

Having found that the Landlord has contravened section 28 of the Act, therefore under section 7 of the Act, I determine that the Tenant is entitled to rent abatement in the amount of \$1,500.00, representing \$100.00 per month during the months that the Tenant was subjected to excessive noise from the upstairs Tenant.

The Tenant has been successful in her application and is entitled to recovery of the \$50.00 filing fee for the cost of this application from the Landlord.

The Tenant has established a monetary order in the amount of \$1,550.00.

**Conclusion**

Pursuant to Sections 65(1)(f) and 72(2)(b) of the Act, I hereby order that the Tenant is entitled to apply the \$1,550.00 awarded for damages and recovery of the filing fee towards rent. Therefore, the Tenant's next rent payment will be nil and the following month's rent payment will be \$178.00.

March 10, 2009

---

---