



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: MNDC, FF

## Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement as well as to recover the filing fee for this proceeding.

The Tenant served the Landlord by registered mail on January 16, 2009 with a copy of the Application and Notice of Hearing in this matter. According to the Canada Post online tracking system, a notification card was left for the Landlord, however, she did not pick up the hearing package. The Tenant claimed that the address to which the hearing package was sent (ie. the rental unit address) was the mailing address used by the Landlord during the tenancy. I find that the Landlord was properly served pursuant to s. 89 of the Act and the hearing proceeded in her absence.

## Issue(s) to be Decided

1. Is the Tenant entitled to compensation for damages and if so, how much?

## Background and Evidence

This tenancy started on December 1, 2008 and ended on December 31, 2008. Rent was \$1,700.00 per month.

The Tenant claimed that within a day of moving in, she noticed a great deal of noise coming from the basement suite in the rental property. The Tenant said she contacted the Landlord on or about December 6, 2008 about the noise as well as about some other issues concerning lights, a refrigerator filter, a smoke alarm and reimbursement for the basement suite share of the utilities. The Tenant said the Landlord advised her that she would talk to the tenant in the basement suite about the noise.

The Tenant claimed that by December 10, 2008, nothing had been resolved and as a result, she sent the Landlord an e-mail setting out her complaints about these matters together with her written notice ending the tenancy effective January 31, 2009. The Tenant said the Landlord came to the rental unit a few days later and said again that

she would speak to the basement suite tenant about the noise. On December 16, 2008, however, the Tenant said at about 10:30 pm, the lower suite tenant's girlfriend arrived at the rental unit and started banging on the door and yelling and swearing. The Tenant said she asked the tenant in the lower suite to do something about it but the yelling and banging continued for some time longer.

The Tenant said she contacted the Landlord by e-mail the following day to advise her of the events of the prior evening. The Tenant said she advised the Landlord she would be leaving instead at the end of December, 2008 and made arrangements to meet with the Landlord on January 4, 2009 to pick up her security deposit. On that date, the Tenant said the Landlord advised her that she knew the tenant in the lower rental suite used drugs and had a problem with his ex-girlfriend. The Tenant argued that the Landlord should have disclosed these facts to her prior to renting out the rental unit. As a result, the Tenant sought the return of ½ of her rent for December and all of her rent for January, 2009 (which was reduced to \$1,500.00).

### Analysis

I do not accept the Tenant's argument that the Landlord had a duty to disclose her knowledge of the downstairs tenant prior to entering into the tenancy agreement with the Tenant as I find there is insufficient evidence to conclude that the Landlord knew the downstairs tenant would likely create an unreasonable disturbance.

Section 45(3) of the Act says that if a Landlord fails to comply with a material term of a tenancy agreement and has not corrected the situation within a reasonable period after the Tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the Landlord receives the notice. Section 28 of the Act says that a tenant is entitled to quiet enjoyment which includes the right to freedom from unreasonable disturbance. The right to quiet enjoyment is considered a material term of a tenancy agreement as is the payment of rent.

The Tenant said she gave the Landlord written notice of the noise problem on December 10, 2008 which stated in part as follows:

"We are also uncomfortable with the amount of noise that comes up the stairwell from the basement, I don't think the tenant is extra loud I just think that there probably isn't enough soundproofing. I'm sure he hears us too. There have been more than one evening where we haven't been able to sit quietly and have a conversation in our living room. On Sunday it was noisy all day. I will say it's nice and quiet today, he must be working."

This e-mail however, does not put the Landlord on notice that the Tenant will end the tenancy earlier than January 31, 2009 if something is not done about the noise.

Similarly, in her e-mail to the Landlord dated December 17, 2008, about the disturbance with the lower tenant's girlfriend, the Tenant wrote (in part):

"I don't think we should have to put up with this type of behaviour and I will call the police next time but I thought you should know for your next tenants, it's something to keep in mind...(and) in any case this is not your fault at all but we just thought you should know so you can take these things into account when renting out to someone else."

There is nothing in the above 2 messages that warns the Landlord that if corrective action is not taken to remedy the noise disturbances by a certain time the Tenant will end the tenancy earlier than January 31, 2009. In fact, it was not until December 29, 2008 that the Tenant wrote to the Landlord and advised her that she would be moving out by January 1, 2009.

Although I find that the Tenant advised the Landlord she was being disturbed by noise from the tenant in the lower suite prior to December 17, 2008, there is no evidence of that problem continuing after that date. In other words, there is no evidence that the Tenant suffered a loss of quiet enjoyment for the period December 17 – 31, 2008 and therefore she is not entitled to damages on that basis.

I also find that the Tenant did not advise the Landlord that she would be ending the tenancy earlier than January 31, 2009 if the Landlord failed to deal with the noise problem. As a result, I find the Tenant was not entitled to end the tenancy earlier than January 31, 2009 and is not entitled to be reimbursed her rent payment for that month.

### Conclusion

The Tenant's application is dismissed.