

## **DECISION**

Dispute Codes            MNDC, OLC, RP, O

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and their witnesses the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witnesses.

All testimony was taken under affirmation.

### Issues(s) to be Decided

This is a request for a monetary order for \$3200.00, a request that the landlords be ordered to comply with the tenancy agreement by providing quiet enjoyment of the rental unit to the tenant, and a request that the landlords repair a fireplace in the rental unit.

### Background and Evidence

The applicant stated that:

- Since the beginning of the tenancy he has since suffered from excessive noise from the rental unit above him.
- He has requested that the landlord deal with the noise from the tenants above but to date nothing has changed.
- When he moved in he was told that an older couple lived upstairs, however there are children at the house six days a week, who make continual excessive noise.
- The noise has been so bad that he has been unable to use the rental unit for sleeping.
- He has filed numerous complaints with the landlord however the landlord does not appear to take his complaint seriously as the noise is still ongoing.

- The noise is so bad that he has to turn his stereo up loud to drown out the noise from upstairs.
- The landlord has also failed to repair a fireplace in the rental unit which he had been informed at the beginning of a tenancy would be repaired.

The tenant's mother stated that:

- While speaking on the phone to her son she could overhear the noise in the background.
- The noise was very loud and disruptive to their conversation.
- She heard the noise at all times of day and night even up to midnight.
- During the daytime the noise was mostly from loud children, and at night appeared to be loud banging or stomping coming from above.
- All the sounds were heard over the phone, and her son verified with her that the noise was coming from the upstairs suite.

The applicant is therefore requesting that, due to loss of use and enjoyment, the landlord be ordered to return \$3200.00 of the rent he has paid, that the landlord insure that the noise from upstairs is dealt with so that he is provided with quiet enjoyment of his rental unit, and that the landlord insure that the fireplace is repaired.

The landlord stated that:

- The tenant was informed when he moved into the rental unit that the upstairs tenant's grandchildren would be at the home during the day.
- He has had numerous complaints from the applicant however each time he has investigated he has found the sounds coming from the upper unit to be within the normal range.
- He had a previous tenant in the rental unit who lived there for four years with the same tenants above him and had no complaints whatsoever from that tenant.  
(Witness letter from that tenant is attached)
- He has had numerous complaints from the upstairs tenants about the behaviour and the noise coming from the lower/applicants suite.
- He believes there is only normal household sounds coming from the upper suite, and that the applicant's complaints are unjustified.

- The majority of the upstairs has carpet on the floors, with the exception of the kitchen area.

The landlords witness stated that:

- It is the downstairs tenant that is the problem, frequently leaving his stereo on extremely loud for long periods of time, even when he is not at home.
- They have tried everything they can to keep the noise down upstairs, however nothing satisfies the applicant.
- The applicant has been so disruptive that they have twice had to call the RCMP and once had to call the City Bylaw Officer.
- The kids make only normal sounds for children and are only there from 8 to 5, 5 days a week.
- The adults do not make a loud noise or stomp around the house, and are usually in bed well before midnight.

The landlord therefore believes that the tenants claims are unfounded, and it is application should be dismissed.

### Analysis

This is a basement suite in a residential house and as such there is bound to be some sound transfer between floors, as there is not the level of soundproofing you would find in an apartment building.

I accept that the applicant finds the level of noise from the upper unit to be too much for him to handle, however in this case it is my finding that the applicant has not met the burden of proving that the noise level from the unit above is outside the normal range.

Everyone's sensitivity to noise is different, and in this case it appears to the applicant is unable to handle the normal everyday household sounds that transfer from the upper floor, where as the previous tenant did not find the amount of sound transfer to be excessive.

Since I do not find that the amount of sound transfer between floors to be excessive for a basement suite in the residential unit, I will not issue any order against the landlord.

I also make no order regarding a fireplace, as the applicant is provided no evidence to show that a fireplace was to be included in the rental unit.

### Conclusion

This application is dismissed in full without leave to reapply.

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: May 28, 2010.

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Dispute Resolution Officer