



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDC

### **Introduction**

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act or tenancy agreement.

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

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

### **Background and Evidence**

This tenancy started on April 1, 2011 and ended on June 21, 2011 when the Tenant moved out. Rent was \$325.00 per month payable in advance on the 1<sup>st</sup> of each month. The rental unit is a room in a boarding house. The Tenant has the shared use of a kitchen and bathroom facilities with other tenants.

The Tenant said that when he responded to the Landlord's advertisement he was advised by the Landlord that it was a quiet building. The Tenant also said that when he viewed the rental property with the Landlord, the Landlord told him that the tenants were mostly older, quiet tenants but that there had been some previous noise issues with the tenant in suite #106 which he believed had been resolved. The Tenant said the Landlord did not advise him that there were other tenants in the rental property with drug and alcohol addictions and with mental health issues. The Tenant claimed that shortly after he moved in, however, he was constantly disturbed by noises made by other tenants as follows:

- The tenant in suite #106 played his stereo loud late at night;
- The tenant in suite #117 walked around late at night chanting and slamming the bathroom door repeatedly. This tenant also threw garbage downstairs, all of which disturbed the Tenant's sleep;
- The tenant in suite #118 banged on the floor and spoke loudly to the tenants living on the floor below him. When the Tenant complained about this tenant, this tenant started harassing the Tenant by putting notes under his door and looking in his window when he came and went from the rental property;

- The tenant in suite #119 had his girlfriend living with him contrary to the Landlord's policy. This tenant's girlfriend let in strangers. This tenant and his girlfriend got into loud arguments. This tenant also made noise when he brought bags of cans into the building to sort late at night.
- The shared kitchen facilities are next door to the rental unit and other tenants using it late at night make noise and let other, unauthorized individuals into the building who have set off the fire alarm.

The Tenant said he brought many of his complaints to the attention of the Landlord and the resident building manager but nothing was done. After some time, the Tenant said he found it difficult to contact the Landlord and believed he was trying to avoid the Tenant because he did not want to deal with the Tenant's complaints. The Tenant said the occupant of suite #117 had been placed temporarily in a psychiatric facility but returned on June 21, 2011. The Tenant said he could no longer take the noise so he decided to move out that day although he would be "homeless." The Tenant admitted that he went to visit his family for some time and has recently found a residence.

The Tenant argued that the Landlord failed to take reasonable steps to screen potential tenants and failed to take adequate steps to address his complaints about the noise. The Tenant also argued that the Landlord misled him about the building being quiet and claimed that the building manager told him that before he moved in the noise had been much worse (which the building manager denied). The Tenant further argued that the previous occupant of the rental unit moved to another, quieter suite in the building as a result of the noise but that the Landlord had withheld this information from him.

The Landlord denied that there was an unreasonable amount of noise in the rental property and argued instead that the Tenant's complaints during his tenancy were "incessant, rambling and unsubstantiated." The Landlord claimed that he responded to the Tenant's complaints and took action on those that are legitimate but the Tenant was unreasonable in making demands that he evict others for allegedly making noise. In particular, the Landlord responded to the Tenant's allegations as follows:

- The Landlord claimed he received only 3 noise complaints about the tenant in suite #106 in June of 2011 and told him that he would end his tenancy if there were any further noise disturbances. The Landlord said there were no further noise disturbances from this tenant after that date;
- The Landlord also said that he spoke with the tenant in suite #118 about the noise he was making (talking loudly to other tenants) and he stopped (which the tenant denied);
- The Landlord admitted that the tenant in suite #117 was chanting but claimed it was part of his religious practice and that he was not prepared to restrict the

tenant's human rights. The Landlord claimed however, that he was seeking to end this tenant's tenancy for other reasons.

- The Landlord denied that the tenant in suite #119 had another person living with him and claimed that she was merely a guest. The Landlord denied that this tenant's girlfriend let strangers into the building. The Landlord said he advised this tenant not to sort his cans in the building because it was disturbing the Tenant and now he does this outside.
- The Landlord also said that in response to the Tenant's complaint about noise coming from the shared kitchen, he posted a notice advising other tenants not to use that facility between 10:30 p.m. and 8:00 a.m.

The Landlord argued that aside from the 3 complaints about the noise from the tenant in #106, he has received no noise complaints from any other of his tenants. In support the Landlord provided written statements from each of the other tenants of the rental property that stated "Other than the odd isolated incident at [the rental property address] I do not find the noise level or disturbances to be overly excessive." The Landlord said that the tenant of the suite on the other side of the kitchen (#114) has resided there for 14 years and has made no noise complaints about the kitchen. The Landlord said there are other tenants who reside on the same floor as the tenant who have lived there from anywhere between 3 years and 30 years. The Landlord denied that the previous tenant of the rental unit left because of noise and claimed instead that he moved to Florida to be closer to his family. In essence, the Landlord argued that any incidences were isolated, infrequent and to be expected in a rooming house.

The Landlord's witness, M.K., (who is the building manager) said that he also resides in the rental property (although on a different floor than the Tenant) and claimed that he did not get many complaints from other tenants and did not experience a lot of noise himself other than the "usual stuff" such as street people pushing carts down the back alley, VGH helicopters flying overhead and emergency vehicles driving by. M.K. said he could recall only the following incidences during the tenancy period:

- The tenant of #106 playing loud music in June 2011;
- One occasion when the girlfriend of the tenant in #119 locked him out and he banged on the door and shouted;
- One occasion when the fire alarm went off.

M.K. agreed that the Tenant left him many, many notes with complaints but he corroborated the Landlord's evidence that these complaints were dealt with by himself or the Landlord.

The Landlord also argued that the Tenant was not rendered homeless by him but instead moved out without giving him any notice (or warning that he would move out if the noise complaints were not dealt with) which the Tenant admitted.

## **Analysis**

Section 28 of the Act says that “a tenant is entitled to quiet enjoyment including but not limited to the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the Landlord’s right to enter the rental unit in accordance with s. 29 of the Act and use of common areas for reasonable and lawful purposes, free from significant interference.”

RTB Guideline #16 – Claims in Damages describes “aggravated damages (in part) as follows at p. 3:

“These damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. (Intangible losses for physical inconvenience and discomfort, pain and suffering, grief, humiliation, loss of amenities, mental distress, etc.) Aggravated damages are designed to compensate the person wronged for aggravation to the injury caused by the wrongdoer’s willful or reckless indifferent behavior. They are measured by the wronged person’s suffering.”

The Tenant sought compensation of \$150.00 per month for each of the 3 months that he claimed his right to quiet enjoyment was breached due to noise disturbances. The Tenant also sought aggravated damages because he claimed that the Landlord misled him about the rental property being quiet and because he was forced to leave the rental property because the Landlord would not deal with his complaints about the noise.

In this matter, the Tenant has the burden of proof and must show (on a balance of probabilities) that his right to quiet enjoyment was breached and that the Landlord acted willfully or recklessly or indifferent to his suffering. This means that if the Tenant’s evidence is contradicted by the Landlord, the Tenant will need to provide additional, corroborating evidence to satisfy the burden of proof. The Landlord argued that many of the Tenant’s claims were generalizations and lacking specific dates or details and unsupported by any corroborating evidence. Having reviewed all of the evidence, I also find that this is the case.

For example, the Tenant claimed that the resident of suite #117 *constantly* made noise throughout his tenancy but then gave evidence that this person had been away for a period of time in June. The Tenant also claimed that the Landlord did *nothing* about his noise complaints but later admitted that the Landlord did speak to the tenant in #106 about the noise but gave him an invalid notice to end tenancy. The Tenant further claimed that the Landlord did *nothing* about the noise in the kitchen but then admitted he had posted a notice in the kitchen restricting its use in the late evening hours and that the building manager made rounds to ensure the outside access door to the kitchen was closed.

Furthermore, the Tenant provided one written statement from another tenant in suite #111 who claimed that there was an ongoing problem with the tenant in suite #106 and with the tenant in #117 chanting. However, the Landlord also provided a written

statement from this same tenant who claimed that he was not disturbed by noises. This tenant did not attend the hearing to be questioned on his statements and therefore I cannot give either of his statements very much weight because they are inconsistent and therefore unreliable.

Consequently, given the contradictory evidence of the Tenant and the Landlord (and his witness) and in the absence of any additional or corroborating evidence from the Tenant to resolve the contradiction, I find that there is insufficient evidence to support his claim and as a result, it is dismissed without leave to reapply.

### **Conclusion**

The Tenant's application is dismissed 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: September 14, 2011.

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Residential Tenancy Branch