



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy began on June 1, 2001. The Tenant states that for over a year stomping and loud noises coming from the upper unit has caused the Tenant to lose sleep and quiet enjoyment of the unit. The Tenant states that the stomping has become worse over time and that the noise occurs nearly daily and occurs early in the morning and early afternoon to late at night. The Tenant provided three letters from witnesses about the noise experienced while at the Tenant’s unit. One letter is undated and does not provide any time span for the four incidents noted. A second letter, dated, heard heavy walking and running steps on an undated occasion. The third letter is dated and notes the sounds heard on January 16, 2012 between the hours of 10:30 a.m. and 1:30 p.m. were “like an earthquake”. The Tenant states that the noise has become so bad that she has lost sleep and has to take sleeping medication. The Tenant supplied a letter from her physician confirming that the Tenant was placed on sleep medication due to an inability to sleep for several months preceding January 20, 2012. The Tenant also

supplied a letter from her employer that notes a change in the Tenant since the middle of January 2012 in that the Tenant appears tired and foggy and has made some little mistakes at work. The Tenant states that although she has complained to the Landlord, the noise has not stopped. The Tenant supplied a documented account of the noise over full day periods that occurred on January 16, 23, 24, 25, 27, 28, 29, 30 and February 1, 2, 3, 4, 5, and 6, 2012. The Tenant also supplied letters from other persons who witnessed noise levels on one or more of these dates while in the Tenant's unit. These persons note that the noise level is not within a normal range and have occurred both before and following the Tenant's latest complaint to the Landlords and the application date. The Tenant argues that the upper tenant feels some sense of entitlement and that since January 2012 the noise has been "out of control".

Although the Tenant raised issues involving a cat and rudeness in the materials submitted for the Hearing, the Tenant states that the issue with the cat is not compelling and that she no longer feels that rudeness is an issue.

The Landlord states that upon first hearing of the Tenant's complaint about noise in August 2011, the Landlord spoke with the upper tenant and since then has heard no complaints until the Tenant left three more notes of complaint on January 9, 2012. The Landlord states that upon receiving these complaints, they spoke with the upper tenant, investigated other sources of noise such as from the heater, attended in the Tenant's unit to observe noise levels and finally, wrote a warning letter to the upper tenant on February 6, 2012. The Landlord states that a single tenant who works shift work and odd hours occupies the upper unit and that as the building is a wood frame building, a certain amount of noise would be expected. The Landlord states that the upper unit contains some carpet and the upper tenant has been asked to use throw rugs in heavy traffic areas. The Landlord suspects that the running sounds heard in the unit may be from persons running up the stairwell located near the Tenant's unit. The Landlord submitted a letter to the Tenant, dated January 12, 2012, that addresses the Tenant's concerns raised in her letters to the Landlord on January 9 and 10, 2012. The Landlord states that they are carrying out their obligations to the Tenant and to other tenants

The Tenant states that she does not and will not smoke in her unit and that throughout her tenancy until July 18, 2011, she smoked on her balcony. On this date, the Tenant received a letter from the Landlord warning her that a complaint was made about the Tenant's regular smoking on her balcony and a strong odor entering the units of other occupants. The letter indicates that further actions such as seeking the Tenant's eviction may be contemplated should the Tenant continue to smoke.

The Tenant states that since this date, she has been smoking outside the building and that this has caused her inconvenience and discomfort during bad weather and that the requirement that she smoke outside raises privacy and safety concerns for herself, particularly when she requires a cigarette late at night. The Tenant states that other tenants smoke on their balconies but have not been required to smoke outside the building. The Parties agree that nothing in the tenancy agreement restricts the Tenant from smoking in her unit or on the balcony. The Tenant requests an order allowing her to smoke on her balcony and compensation for lo.

The Landlord agrees that there has been only one complaint about the Tenant's smoking and that this complaint came from the upper tenant. No other complaints were received from this tenant or other tenants either before or since July 2011. The Landlord states that the warning letter sent to the Tenant did not specifically restrict her from smoking on the balcony but that if they receive a complaint from another tenant, they are obligated to act to ensure that tenant's right to quiet enjoyment are not negatively affected by the Tenant's smoke. The Landlord states that in 2011, the Landlord adopted a policy to require adherence to the City Health bylaw that restricts smoking. The tenants in the building were informed of this policy by way of a general notice of the bylaw in the laundry room. The Landlord argues that the adoption of policy based on the bylaw is reasonable and benefits all Tenants. The Landlord states that the Tenant's only restriction is to refrain from smoking on the balcony when another tenant will be disturbed.

The Tenant claims the amount of \$25,000.00 for loss of her right to quiet enjoyment of the unit arising from the Landlord's restriction on her smoking and in relation to the noise in the unit. The Tenant states that the amount being claimed is not based on anything and is an arbitrary figure.

### Analysis

Based on the undisputed evidence of the Parties, I find that the tenancy agreement does not include any restriction on smoking in the unit or the balcony of the unit. Given this tenancy agreement, I find that the Tenant is entitled to smoke either in her unit or on the balcony. Although the Landlord has sought to restrict smoking of the Tenant on the basis of complaints from other tenants and on the basis that the application of the City bylaw to all tenants is reasonable, this action on the part of the Landlord does not form part of the tenancy agreement nor does the adoption of such a policy serve to amend an existing tenancy agreement. It may very well be that other tenants object to the smell of cigarette smoke, however, it would be prudent of the Landlord to inform prospective and existing tenants that the building contains tenants whose tenancy agreements do not restrict them from smoking.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including the right to freedom from unreasonable disturbance. Given the Tenant's evidence, including witness evidence, I find that the presence of noise in the Tenant's unit is substantial, well supported and a breach of the Tenant's right to quiet enjoyment of her unit. Although the Landlord argues that they have carried out their obligations to provide the Tenant with peaceful enjoyment of her unit by speaking with the upper Tenant and investigating other sources of the noise, I find that as the Tenant has not had any complaints of noise before the upper tenant moved in and as the other sources investigated were always present and not the source of any complaint before, the Landlord has failed to reasonably act in relation to the Tenant's stated source of the noise. I further find that waiting nearly a month to issue the upper tenant with a warning letter is an unreasonable amount of time to carry out such a remedy given the level of noise being experienced. Accepting that the Tenant did not raise any issue with noise

between the first complaint in August 2011 and the second complaint on January 9, 2011, and that no evidence was provided that the noise continued after the Landlord's letter to the upper tenant on February 6, 2012 I find that the Tenant has substantiated an infringement to her right to peaceful enjoyment from January 9, 2011 to February 6, 2011 due to noise from the upper tenant. I further find, based on the medical evidence, that the Tenant has suffered a lack of sleep from the noise and has been placed on medication as a result.

As the Tenant did not provide any rationale for the amount claimed, I find that the Tenant has not substantiated the amount claimed. I do find however that the Tenant is entitled to a reasonable monetary amount of **\$500.00** for the loss of quiet enjoyment of her unit. I find that the Tenant is also entitled to recovery of half the filing fee for **\$50.00** for a total entitlement of **\$550.00**. I order the Tenant to reduce future rent payable by this amount.

#### Conclusion

The Tenant is entitled to a monetary amount of \$550.00. I Order the Tenant to reduce future rent payable by this amount.

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: February 24, 2012.

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Residential Tenancy Branch