



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

At the conclusion of the hearing, after all evidence had been given, the tenant abruptly and unexpectedly disconnected from the conference call. As testimony had concluded before the tenant disconnected, the hearing ended shortly thereafter with no further evidence received from the landlord.

The landlords had entered into evidence a court document related to an unrelated matter. I found the issue to be irrelevant to the claim before me and did not consider that evidence or allow the tenant to respond to it.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The rental unit is in the basement suite of a home in which the landlords reside on the upper floor. The landlords have a 4 year old and a 1 year old child. The parties agreed that the rental unit is directly below the 3 bedrooms of the landlords and their children.

The tenant testified that when he moved in on December 1, 2011, he was told that the house was soundproof and claimed that he told the landlord that he suffers from severe medical issues which require absolute quiet. The tenant entered into evidence a doctor's report from 2007 which stated that the tenant had suffered from sleep apnea for several years prior to the report. The tenant claimed that the landlord's children were excessively loud and that at all hours of the day and night they were making noise which was so disruptive, he was unable to sleep or enjoy the rental unit. He testified that he could hear the older child running throughout the house and that he heard the baby kicking and screaming at night. He claimed that he had complained to the

landlord 4 times but the noise continued, except for a few days in which the noise level was significantly reduced. The tenant stated that he had to vacate the unit on January 31, 2012 because the noise level was so severe. He seeks to recover the 2 months rent paid as well as his moving costs and an additional \$500.00 for stress.

The landlords denied having told the tenant that the house was absolutely soundproof and stated that the tenant did not make any medical issues known to them until after the tenancy had already begun. They stated that when the tenant complained that he could hear their children, they made some changes which included instructing their 4 year old not to run in the hallway, which the tenant had found disturbing, and removing toys from the children's rooms and arranging for them to play either in the living room or the playroom so they were not directly above the tenant. The landlords testified that the children left the house by 7:45 each workday and were not home until 5 p.m. They went to bed at 7 each night and while the baby occasionally awoke and cried during the night, he was quickly and easily soothed. They denied that the baby kicked and screamed during the night. The landlords provided a photograph of 9" soundproofing insulation to show that the basement area was soundproofed.

### Analysis

In order to succeed in his claim, the tenant must prove that he has been unreasonably disturbed. Section 28(b) of the Act grants the tenant a right to "freedom from unreasonable disturbance." I find that by implication, tenants do not have a right to freedom from reasonable disturbances.

The rental unit is part of a home in which family resides upstairs, facts known to the tenant at the time he entered into the tenancy. I am not satisfied that the tenant made his hypersensitivity to noise known to the landlords at the time he entered into the tenancy as the landlords denied having been made aware at that time and the tenant provided no evidence to corroborate that claim. I find that the tenant should have reasonably foreseen that living in a multi-family dwelling in which small children were residing on the floor immediately above, he could expect to hear noise from the upper floor. Tenants who reside in multi-family dwellings cannot reasonably expect the same degree of protection from noise that is expected by those who live in single family dwellings.

The tenant provided medical evidence showing that he has sleep apnea, which caused him to repeatedly awake from sleep. This evidence does not establish that he requires absolute quiet to sleep; in fact, it suggests that he would awake at night regardless of his environment. I am not satisfied that landlords children are the cause of the tenant having been awakened at night.

I accept that the landlords did what they could to minimize the noise made by their children and I find it unlikely that the noise described by the tenant was as continual as he claimed, particularly given the fact that the children were gone or in bed for most of the weekdays.

While the tenant may have been exposed to an occasional unreasonable noise level, I am not satisfied that it reached a degree that would attract compensation.

For these reasons, I dismiss the tenant's claim in its entirety.

### Conclusion

The claim 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: March 30, 2012

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Residential Tenancy Branch