



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, MNSD, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord, requesting an order for monetary compensation for losses arising from the Tenant breaking a fixed term lease early, to retain the security deposit and pet damage deposit in partial satisfaction of the claim, and to recover the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues(s) to be Decided

Did the Tenant breach the fixed term lease, entitling the Landlord to monetary compensation?

### Background and Evidence

This tenancy began on November 1, 2011, with the parties entering into a fixed term tenancy agreement for one year ending on October 31, 2012. The monthly rent was \$750.00, payable on the first day of the month. The Tenant paid the Landlord a security deposit of \$375.00 and a pet damage deposit of \$375.00 in October of 2011.

The Tenant vacated the rental unit before the end of November 2011, in the first month of the tenancy. The Landlord has provided evidence that the rental unit was not re-rented until February 1, 2012. The Landlord claims for loss of rent for December of 2011 and January of 2012.

The Tenant testified that that she had to leave the rental unit for her own health and safety, due to problems with the renter who occupied the rental unit above the subject rental unit (the "Upper Unit").

The Tenant testified that starting on November 1, 2011, until she vacated the rental unit, she suffered due to the noise being made by the renter in the Upper Unit. She testified that that there were very loud bangs and bumping noise coming from the upper unit, at all hours of the day and night. The Tenant testified that it sounded like furniture or weights being dropped on the floor from a significant height.

The Tenant testified that the renter in the Upper Unit also began to swear and yell down at her, from the bathroom above into her bathroom. She testified she could understand every word he was yelling and she feared for her safety.

The Tenant's boyfriend, who provided a statement in evidence, attempted to talk to the renter in the Upper Unit but left when the renter became confrontational and threatening. This person also writes that the level of noise and thumps "rattled windows" in the subject rental unit.

The Tenant testified that when she went to the property manager in the building about the noise from the Upper Unit, he warned her not to have anything to do with the renter in the Upper Unit, "... because he is a psycho". The Tenant was cautioned not to have any confrontations with this renter.

The Tenant recorded that the noise continued on nearly every day and night, and this caused her to lose sleep and worry. The Tenant testified she starts work early in the morning and had to be up around 4:30 or 5:00 a.m. each day. She testified the noise caused her to lose much sleep and to suffer severe anxiety.

The Tenant further testified that her cat, which she had for nine years, was stressed by the noise from the Upper Unit and ran away by jumping off the balcony of the rental unit. The cat did not return and the Tenant testified that this, as well as the noise, caused her to lose peace of mind while staying in the rental unit.

The Tenant testified she was most upset with the Agent for the Landlord who she dealt with when she applied to live in the rental unit. She had been a renter with this Landlord before and was looking for a quiet, safe place to live, as she lives by herself. She made this known to the Agent when she asked about the building. He told her it was a very nice building and no one bad lived there. I note the Agent for the Landlord, who appeared at the hearing, did not deny this conversation.

The Tenant was informed by the property manager that the renter in the Upper Unit was leaving by the end of November 2011. There appears to be conflicting information on whether the renter in the Upper Unit was leaving of his own accord, or if the tenancy was ending due to a Notice to End Tenancy issued to this renter by the Landlord.

The Landlord also offered to move the Tenant into a different rental unit, at a reduced rate of rent, until the renter in the Upper Unit left. The property manager offered to help the Tenant move her property into the different rental unit. The Tenant politely declined this in a letter to the property manager, stating she had already found a different rental unit in another building and she was very upset about losing her cat.

The Tenant further submitted that she did not want to move out of the rental unit so quickly, but she felt her safety and health were in jeopardy due to the noise from the Upper Unit.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find the Tenant breached the Act and the tenancy agreement by breaking the fixed term lease before it ended.

Under section 45(1) of the Act, the Tenant could not have ended the fixed term agreement before it ended, unless she had an order from a Dispute Resolution Officer allowing this or she had enforced her other rights under the Act.

To enforce her other rights under the Act, the Tenant should have written to the Landlord and explained that she considered the noise upstairs to be a breach of the material term of the right to quiet enjoyment in the tenancy agreement. The Tenant would have given the Landlord a reasonable amount of time to correct the situation and if it did not improve, then she could have given her written Notice to End Tenancy to the Landlord or have filed an Application to enforce her rights under the tenancy agreement and the Act.

I find that the Landlord mitigated its losses by offering the Tenant alternate accommodation and by quickly advertising the rental unit.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on all of the above, I find that the Landlord have established a total monetary claim of **\$1,500.00**, comprised of two months loss of rent, due to the breach by the Tenant.

Nevertheless, I find that the Landlord knew or ought to have known that the renter in the Upper Unit could cause the Tenant to suffer a loss of quiet enjoyment. According to the evidence before me, I find it was, or should have been, apparent to the Landlord that the renter was causing troubles in the building for the anyone who would rent the subject rental unit. Therefore, I decline to award the Landlord the \$50.00 fee paid for this application.

I also find that the Landlord has not made a claim that the Tenant's pet caused damage to the rental unit. Therefore, the Landlord had no right to retain the pet damage deposit and should have returned this to the Tenant within 15 days of the end of the tenancy. Pursuant to the Act and policy guidelines, I must order the Landlord to pay the Tenant double the pet damage deposit in the amount of \$750.00.

Pursuant to the Act and policy guideline I allow a set off, and I order that the Landlord may keep the security deposit of **\$375.00**, and the doubled pet damage deposit of **\$750.00 (2 x \$375.00)**, in partial satisfaction of the claim, and I grant the Landlord an order under section 67 for the balance due of **\$375.00**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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 21, 2012.

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Residential Tenancy Branch