



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order for compensation for loss under the Act.

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.

### Issue(s) to be Decided

Is the tenant entitled to compensation under the Act?

### Background and Evidence

This matter commenced on December 1, 2011, and counsel for the landlord sought an adjournment as his client the executor represents the deceased landlord. The executor was not aware of the tenants concerns and arrangements were made with the tenants to address their concerns. There were discussions that a settlement agreement could be reached.

When this matter reconvened on March 6, 2012, the executor for the landlord had addressed the tenants concerns. However, a settlement agreement on compensation had not been reached.

The tenancy began on November 16, 2002. The tenants are seeking a retroactive rent abatement of two thirds of their monthly rent for the period of October, 2010 to January 1, 2012. The tenants are seeking compensation in the amount of \$9,000.00.

The tenant (SW) testified that in October 2010, the occupant in the rental unit above the subject unit removed the carpet as she liked the hardwood floors underneath the carpet. The tenant (SW) states that when she removed the carpet the noise became intolerable; you could hear a coin drop on the floor above.

The tenant (SW) testified as a result of the carpet being removed he would awaken during the night, when the occupant above him would walk around or had company

over. The tenant (SW) states he was required to purchase sleep aids and ear plugs and found it hard to get a good night's sleep.

The tenant (SW) testified that he left messages for the property manager, but his calls were never returned.

The tenant (SW) testified that they sent a letter to the property manager on July 21, 2011, requesting that the carpets be reinstalled in the rental unit above them, and there were no responses from the property manager. A second and final written request to the property manager was sent on August 18, 2011.

The tenant (SW) testified the noise was exceptionally bad in December 2011 and he went and slept at his brothers for a couple of weeks.

The tenant (SW) testified that it is a character of the house that noise travels and everyone is very aware of what they need to do to help reduce the noise level.

The tenant (DI) testified that he can confirm the tenant (SW) was affected by the noise, because he could hear him walking around at night.

The tenant (DI) testified that this rental property was an old house that was converted to rental units and there was no sound proofing.

#### Cross-examination of the tenant (SW) by counsel for the landlord

The tenant testified that he is very aware that this building is very sound sensitive and understands that is a character of this property. However, when the occupant above his rental unit removed the carpet it made the noise unbearable at many times.

The tenant testified the first time they filed a complaint with the landlord in writing was July 21, 2011.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 7 of the Act states that if a landlord or tenant does not comply with this Act, or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In order to justify payment of damages under section 67, the tenants have the burden of proof to establish that the landlord did not comply with the agreement or Act and that

this non-compliance resulted in costs or losses to the tenants, pursuant to Section 7 of the Act. The evidence must satisfy each component of the test below.

#### Test For Damage and Loss Claims

- 1) Proof that the damage or loss exists;
- 2) Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement;
- 3) Verification of the actual amount required to compensate for the claimed loss or to rectify the damage; and
- 4) Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

The evidence of the tenants was the occupant in the upper unit removed the carpet in her rental unit. As a result of her action it created more noise within the tenant's rental unit and at times the noise was unbearable.

The evidence of the tenants was that this is an older character house which has been converted to rental units and it is a characteristic of the property that noise is easily transferred between rental units.

In this case, while I do believe the tenants were inconvenienced by more noise being created from the occupant in the upper unit as a result of removing the carpet, however, the evidence does not support that the noise that was heard was not normal household noise. There was no evidence of unreasonable and ongoing noises such as parties or loud music. The noise the tenants heard appeared to be normal household noises that travelled through the structure of the building. Therefore, I cannot find that the noise the tenants heard were unreasonable due to the character of the house.

The landlord under Section 32 of the Act must maintain the residential property in a state of decoration and repair that complies with the decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In this case, there were no health, or safety concerns with the structure of the building. Carpeting is not a requirement by law or by tenancy agreement. There was no evidence that the tenant's rental unit was uninhabitable or that they lost the use of any portion of their rental unit. Therefore, I find the landlord has not breached section 32 of the Act.

As I have found the landlord has not breached the Act. I dismiss the tenant's application for compensation.

#### Conclusion

The tenant's application for compensation for loss under the Act is dismissed.

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 23, 2012.

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Residential Tenancy Branch