



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This was the hearing of applications by the named tenants for compensation for loss of quiet enjoyment. The hearing was conducted by conference call. The named tenants called in and participated in the hearing. The landlord was represented by its agent and by legal counsel.

### Issue(s) to be Decided

Are the tenants entitled to compensation for loss of quiet enjoyment and if so what amount should be awarded?

### Background and Evidence

The rental property is a manufactured home park in Surrey. There are four applications before me brought by the named tenants who own manufactured homes on pads rented from the landlord.

On December 3, 2011 there was a power failure at the landlord's Manufactured Home Park. The failure left 95 homes in the park without power. The landlord acted promptly to restore power. Upon the advice of the electrical contractor retained by the landlord on December 5, 2011 the landlord caused five diesel generators to be installed to supply power to the affected homes while repairs were made.

The applicants complained that generators were placed in close proximity to their homes. They said that the generators were noisy and deprived them of quiet enjoyment of their homes.

On December 8, 2011 the landlord received a written complaint from one of the tenants. She said that a generator was placed in her front yard on December 6<sup>th</sup>. She said that:

I understand the reasons that it is here, yet it is affecting our quality of life. We are not able to play outside in our yard with children, decorate our yard for Christmas or use our outdoor deck due to the noise. We have had to leave our home in the daytime, to get away from the noise, and with having young children, it is affecting us greatly. Our family has not been sleeping at night, the children not napping during the day, and I am starting to get headaches from the constant humming that we can hear inside our home....

The tenant said she had been told the generator might be in use for up to 10 days. She asked the landlord to move the generator to the street on the main park drive.

The landlord's representative said that the landlord was advised by an information officer from the Residential Tenancy Branch that because the emergency power generators were required to provide heat and light, it would not constitute grounds to the tenants for loss of quiet enjoyment. According to the landlord the installation of the generators was an inconvenience, but a necessity for the homes without power. On December 9<sup>th</sup> the landlord's representative replied to the tenant's complaint; she said:

In response to your letter received yesterday, we apologise for the inconvenience the generator is causing you. We appreciate that this equipment is noisy however it is necessary until the power can be restored to the homes affected.

The landlord said that the generators have been located next to the kiosks that lost power due to a faulty cable. The landlord did not offer to relocate the generators.

The generators were in operation until December 30<sup>th</sup>.

None of the applicants submitted any documentary evidence in support of their claims. Each of the applicants claimed payment of the sum of \$750.00, being the equivalent of approximately one month's pad rent. All of the applicants testified that the noise from the generators was unremitting; they ran 24 hours per day and interfered with sleep. One of the tenants asked the landlord to pay for a hotel because the tenant and her family needed a respite from the noise. The tenant said that she had to leave the rental unit and take her children to a community center or to other paid activities to provide a break from the constant noise. She said the children were prevented from playing outside because of the noise levels.

Several tenants complained about a lack of sleep and the adverse health consequences. One of the tenants said he was receiving chemotherapy and

desperately needed his rest. I heard evidence from one of the tenants that in addition to the noise the generators caused a constant vibration in the tenant's home and the level of the noise and vibration changed in response to the electrical load.

The landlord testified that a noise complaint was made to the City of Surrey and a bylaw officer attended at the property. The landlord explained the need for the generators and the City did not charge the landlord with any infraction of the noise bylaw.

The landlord relied upon advice that it claimed was given that the tenants are precluded from claiming damages for loss of quiet enjoyment because the operation of the generators was essential to provide power to other occupants.

### Analysis and conclusion

The Residential Tenancy Policy Guideline No. 6, with respect to the right to quiet enjoyment provides that

The Residential Tenancy Act and Manufactured Home Park Tenancy Act<sup>2</sup> (the Legislation) establish rights to quiet enjoyment, which include, but are not limited to:

- reasonable privacy
- freedom from unreasonable disturbance,
- exclusive possession, subject to the landlord's right of entry under the Legislation, and
- use of common areas for reasonable and lawful purposes, free from significant interference.

The guideline also notes that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

It is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

The guideline provides with respect to claims for damages:

- **Claim for damages**

In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed.

The Supreme Court has decided that arbitrators have the ability to hear claims in tort, and that the awarding of monetary damages might be appropriate where the claim arises from the landlord's failure to meet his obligations under the Legislation. Facts that relate to an issue of quiet enjoyment might also be found to support a claim in tort for compensation in damages. An arbitrator can award damages for a nuisance that affects the use and enjoyment of the premises, or for the intentional infliction of mental suffering.

I find that the noise and vibration caused by the generators amounted to a nuisance created by the landlord that significantly affected the tenants' use and enjoyment of their homes for a period of 25 days. I do not consider that the operation of the generators for this period can be characterized as a temporary discomfort or inconvenience. I interpret the provision in the policy guideline as a reference to more transient phenomena or events. I do not accept the landlord's position that the tenants are not entitled to compensation for loss of quiet enjoyment because the work was essential. There is no provision in the Act that mandates such a finding and to so hold would, in effect require the tenants to subsidize the landlord's obligation to maintain the rental property.

The tenants were not entirely prevented from use of their homes, but I heard evidence that their sleep was significantly affected and the tenants had to leave their homes for extended periods to obtain respite from the constant noise. Although the tenants were not physically prevented from occupying or using their homes on the manufactured home sites, I find that the tenants are entitled to an award to compensate them for the loss of use and enjoyment of their homes on the home sites. The quantification of damages in these circumstances will necessarily be somewhat arbitrary. Having regard to the fact that the tenants were able to continue to occupy their homes through the 25 day duration of the nuisance, I fix the award of damages in each case at \$400.00 and I grant each of the four applicants an award in the said amount. The tenants are entitled to recover the \$125.00 filing fee payment made for filing the four applications and I award the sum of \$31.25 to each of the four applicants, for total awards in each

application of \$431.25. Each of the applicants may deduct the said sum from their next instalment of rent payable to the landlord.

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: May 14, 2012.

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Residential Tenancy Branch