



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant, for a monetary order for cost of emergency repairs, a monetary order for compensation or loss under the Act, and to have the landlord comply with 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.

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.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order for the cost of emergency repairs?  
Is the tenant entitled to a monetary for compensation or loss under the Act?  
Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy began on June, 1, 2007. Rent in the amount of \$940.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant.

The rental unit is located in a three story wood constructed building and is heated by hot water.

### Loss of quiet enjoyment – upper occupant

The tenant writes in her application that she is seeking \$25,000.00 compensation for loss of quiet enjoyment from February 6, 2012 to March 5, 2012.

The tenant testified that she has lost quiet enjoyment due to the occupant in the above unit stomping, banging, buzzing and vacuuming. The tenant testified the landlord has

failed to do anything about the noise. Filed in evidence is a diary the tenant kept regarding the upstairs occupant and letters from several people.

The tenant testified that she has made attempts to record the noise on two separate devices, however, the noise was not audible when played back.

On cross-examination by counsel the tenant testified that the occupant in the above unit has lived there since January 2011, and she has always been able to hear noises coming from the unit. The tenant stated that it was after the occupant in the upper unit was rude, and harassed her about the smell of cigarette smoke entering her unit that the noise became bothersome. Filed in evidence is a copy of the written warning dated July 18, 2011, issued to the tenant by the landlord.

The counsel submits that the landlord has taken reasonable steps to address any noise the tenant may be hearing. The landlord tested the hot water heating and replaced zone valves. The landlord, with the tenant present, did noise testing between the two units and the only noise that could be heard were the closing of doors, and cupboards. There was also some squeaking in the floors, hallway and stairwell, and the stairwell is attached to the tenant's unit.

Counsel submits the occupant in the upstairs unit was also served with warning letters, however, the occupant has satisfied the landlord that the unit was unoccupied at the time of the alleged complaints.

Counsel submits the noises the tenant is hearing are normal household noises that are to be expected in a building forty years old and of wood construction.

Counsel submits that there were no prior complaints before the tenant received a warning letter and many of the dates and times in the tenant's diary cannot be accurate as the occupant was at work. Filed in evidence is an affidavit of the occupant and her work schedule.

Counsel submits the tenant and occupant are in dispute and the tenant is retaliating.

#### Loss of quiet enjoyment – illegal entry

The tenant testified on March 16, 2012, she videotaped a lady snooping in her unit while she was at work. The tenant stated that it was not the landlord on the video. The tenant stated she called the police. The tenant stated she made emergency repairs by having the locks changed and is seeking compensation.

The landlord testified that they had the master key to the tenant's unit and no one else has access to the keys. The landlord stated the tenant did not show them or provide a copy of the video for them to investigate the alleged illegal entry.

Counsel submits the tenant changed the locks without the landlord's permission and did not provide a copy of the key to the landlord.

Filed in evidence by the landlord is a copy of the police report regarding this incident, there is no reference of the police officer viewing a video tape.

### Analysis

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

### Loss of quiet enjoyment – upper occupant

In the circumstances before me, I find the version of events provided by the landlord to be highly probable given the events between the tenant and occupant. Considered in its totality, I favor the evidence of the landlord over the tenant for the following reasons.

The work scheduled of the occupant filed in evidence by the landlord, clearly shows the occupant was at work on many days and times the tenant alleged a breach of quiet enjoyment. This contradicts both her testimony and the letters submitted by the tenant.

Some examples are:

Date	Tenant's submission	Tenant's witness letters	Occupants work schedule
March 6	I got home after one pm and I am trying to take a nap, and the stomp does not stop. 3:51pm it sounds like banging, buzzing like vacuum.		7am to 3 pm
March 8	Woken up at 7:01am by loud footsteps		7am to 3 pm
March 11	Came home with friend and at 7:35pm loud steps again at 9:15pm	Loud stomps more like banging	3 pm to 11pm
March 19	5:15pm loud stomps, sound like running 6:28pm march sound like elephant	1)Loud stomps at 7:15pm and 11:52pm 2) Elephants marching 5:15pm to 6:28pm	3 pm to 11pm
March 31	Came home at 6pm continues stomps		3 pm to 11 pm

The evidence of the tenant was she has heard the same noises since the upper occupant moved into the unit in January 2011, and she was able to ignore the noise. It was only after the incident in July 2011, that the noise became bothersome. The evidence of the tenant was that she attempted to record the noise on two separate devices and the noise was not audible, this tends to indicate the noise was not unreasonable. Further, there was no evidence of loud music or parties which is preventable.

In this case, I find that the noises the tenant may have heard are normal household noises, such as vacuuming, opening doors, cupboards and walking and not unreasonable having regard to the age, character and location of the rental unit.

Further, I find it is more likely the tenant is retaliating, as it was only after the occupant was allegedly rude and filed a complaint in July 2011, that resulted in the tenant receiving a warning letter that the complaints started. Therefore, I dismiss the tenant's claim for compensation.

#### Loss of quiet enjoyment – illegal entry

I find the landlord is not be responsible for the incident where the tenant alleged someone entered her unit. It was not the landlord on the alleged video and the tenant did not provide a copy of the alleged video for the landlord to conduct their own investigation.

I also find that it is highly unlikely that a police officer would fail to note in their occurrence report that they viewed a video which would show someone illegally entering the tenant unit. There report states "There were no signs of a break in. Building manager was spoken to" "File concluded as suspicious and not conclusive."  
[Reproduced as written]

The evidence was the tenant changed the locks without the landlord's permission and has not provided the landlord with a copy of the key.

#### **Prohibitions on changes to locks and other access**

**31** (3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change

I find the tenant has breached the Act. **I Order the tenant to provide a copy of the key to the landlord.**

As a result, the tenant's application for the cost of emergency repairs and compensation for loss is dismissed. The tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application is dismissed.

**I Order the tenant to provide a copy of the key to the rental unit 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: June 12, 2012.

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Residential Tenancy Branch