



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, OLC, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for a monetary order for compensation for loss under the *Act* and for the filing fee. The tenant also applied for an order seeking landlord's action to comply with the *Act*. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Has the tenant established a claim for compensation for loss of quiet enjoyment? Is the tenant entitled to the recovery of her filing fee?

### **Background and Evidence**

The tenancy started on November 01, 2005. The rental unit consists of an apartment, located on the eight floor of a 40 year old 12 storey concrete high rise building. The building houses 86 residential units.

The tenant testified that she tutors children in piano and conducts these lessons out of her apartment on weekdays between 3:00pm and 8:30 pm. The tenant also stated that she tutors, occasionally on the weekends.

The landlord stated that some of the other residents made verbal complaints about noise disturbances emanating from the tenant's apartment. On March 07, 2012, the landlord served the tenant with a letter informing her of the other residents' complaints. The landlord stated that some complaints came in writing after she had served the tenant with this warning letter on March 07, 2012.

The letter requested the tenant to limit the piano playing sounds to weekdays from 8am to 5pm. The landlord also filed letters of noise complaints written by some tenants.

Despite the warning letter, the piano lessons continued and the landlord received more complaints from the residents. On May 07, 2012, the landlord served the tenant with a

second letter regarding the noise complaints and also provided the tenant with an opportunity to explain what she intended to do to resolve the issue.

The landlord also pointed out that whenever there is a turnover of tenants, the complaints start to come in and similar situations had occurred in the past at which time, the landlord had given the tenant a warning letter.

The tenant stated that she does not create noise disturbances as her pupils are young children and not strong enough to produce loud piano sounds. The tenant also argued that the landlord has solicited complaint letters from other tenants. The tenant filed some letters of support from the residents. Most of these letters are hand written by the tenant and signed by other residents.

The tenant stated that receiving the warning letters from the landlord caused her a lot of stress resulting in loss of sleep, mental anguish and loss of quiet enjoyment. The tenant is claiming a portion of her rent back from February 2009 and March, April and May 2012 in the total amount of \$1,062.00. The tenant is also claiming \$130.00 for cost of putting her application together and \$50.00 for the filing fee.

### **Analysis**

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy.

Based on the evidence and testimony of both parties, I find that the landlord was acting on noise complaints that she received from other residents. Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if the landlord was aware of a problem and failed to take reasonable steps to correct it. In this case, the landlord acted responsibly by taking action to address the noise complaints which were the cause of the loss of quiet enjoyment of the complainants.

Serving the tenant with warning letters may have caused the tenant some mental anguish, but the reason for the letters was the noise created by the coming and going of students and sounds generated by the students as they took their piano lessons. As of the date of this hearing, the tenant was still tutoring children out of her apartment.

Therefore, I find that the landlord had reason to serve the tenant with warning letters and is not responsible for the resulting stress and mental anguish that tenant alleges she suffered. Accordingly, I find that the tenant has failed to prove her case for compensation in the amount of \$1,062.00, for the loss of quiet enjoyment.

The legislation does not permit me to award any litigation related costs other than the filing fee. Therefore the tenant's claim for \$130.00 for the cost of mailing, photographs, printing, mail, parking etc. is dismissed. Since the tenant has not proven her case for compensation, she is not entitled to the filing fee of \$50.00.

### **Conclusion**

The tenant's application is dismissed in its entirety.

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 21, 2012.

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Residential Tenancy Branch