



# 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 was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"), seeking a monetary order for money owed or compensation for damage or loss, an order requiring the landlord to comply with the Act and to recover the filing fee.

The tenant, her witnesses and the landlord's resident manager were in attendance at the hearing. The hearing process was explained and thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

I accepted that the landlord was served the tenant's evidence in a manner complying with the Residential Tenancy Branch Rules of Procedure.

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, an order requiring the landlord to comply with the Act and to recover the filing fee?

### Background and Evidence

The tenant stated that this month to month tenancy began on June 1, 2002, and the landlord stated that tenancy began on July 1, 2002.

The tenant stated that the monthly rent was to be \$748.00; however the last three months the rent was increased to \$780.00.

The tenant has applied for a monetary order for \$5000.00. When questioned as to this amount, the tenant stated it was meant to compensate her for a loss of her quiet enjoyment, having to go to physiotherapy due to a work related injury and loss of pensionable income.

**Tenant's testimony and evidence:**

The tenant has suffered through a loss of her quiet enjoyment due to the constant noise disruptions from the tenant and her children who moved into the rental unit above her in September 2011.

Due to the property manager's lack of response, the tenant called the police on multiple occasions.

The tenant has complained to the property manager, but no action has been taken, resulting in a loss of quiet enjoyment and sleep deprivation/exhaustion to the tenant. In turn the tenant was injured at work due to being drowsy while operating heavy equipment and she is currently on leave from work due to her work related injuries.

The tenant is unable to live full time in her rental unit due to a lack of peace and quiet, sometimes having to stay away from the rental unit in order to sleep.

The landlord has overcharged for the last three months' rent, as she never received a notice of rent increase. The tenant is entitled to an order returning the monthly rent to \$748.00 and a credit for the months she overpaid.

The tenant submitted copies of the police reports, documentation from her employer showing the tenant's leave from work, medical records, income records, a written notice to the landlord and witness and other tenants' statements.

When questioned, the tenant confirmed that not all complaints were written as there were many verbal complaints.

When questioned further, the tenant confirmed that she called the assistant manager 1-2 times per week, with no results. After that, according the tenant, she "gave up."

**Witness' testimony:**

The tenant's two witnesses testified that they heard the noises complained of by the tenant, on multiple occasions.

**Landlord's testimony:**

Every time the tenant made a complaint, the matter was dealt with by the landlord. The landlord received three complaints within a week in November 2011, and that he has not had any further complaint until May 2012. As he had not received any further complaints, the landlord assumed the matter was resolved.

The landlord denied being informed of the tenant's complaints otherwise.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the claiming party, the tenant in this case, has to prove four different elements:

**First**, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **last**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met all four elements, the burden of proof has not been met and the claim fails.

In relation to the tenant's claim for compensation for an injury received at work, the tenant submitted insufficient evidence that her work related injury was attributable to the actions or neglect of the landlord. The documents submitted by the tenant show an injury at work, with no proof that the injury was causally connected to sleep deprivation. Matters pertaining to worker injuries are not within the jurisdiction of the Residential Tenancy Act (the "Act").

I therefore decline to consider the tenant's request for compensation due to her work related injuries or resulting issues from the same, such as loss of pensionable income and stress at work.

In relation to the tenant's claim for loss of quiet enjoyment, Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to

reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6 states that a landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In the circumstances before me, I accept the evidence of the landlord that he addressed the issue with the upper tenant as I find the tenant submitted insufficient evidence to demonstrate that the landlord was given consistent notice of the alleged unsatisfactory behaviour of the tenants in the above rental unit. In reaching this conclusion, the tenant's evidence shows a police report from November 2011, a police report from February 29, 2012, which shows the case was abandoned, and another report from March 31, 2012. I have no evidence that the landlord was consistently notified in written form of these or any other complaints, until May 1, 2012. In other words, the tenant submitted evidence that she gave the landlord only one written notification of her complaints, although the tenant stated that the problems began in September 2011.

As I do not find that the tenant submitted sufficient proof that the landlord was made aware of the tenant's complaints, I decline to award her compensation for loss of quiet enjoyment.

### Conclusion

As I have found that the tenant submitted insufficient evidence of her monetary claim, I dismiss her claim for \$5000.00.

As to the tenant's claim for reimbursement of an overpayment due to an illegal rent increase, the landlord acknowledged that the tenant's rent should be \$748.00 instead of the \$780.00 which had been automatically deducted from the tenant's bank account for the last three months due to an internal problem. The landlord stated that he understands the problem has been addressed by bookkeeping now and that the tenant's rent payment for July 2012 will reflect a credit of the three months of overpayment, or \$96.00.

In the event the tenant's July rent payment has not been credited in such a manner, I order the landlord to deduct the amount of \$652.00 from the tenant's bank account in satisfaction of the August 2012 rent payment. (\$748.00-\$96.00=\$652.00)

As I find little merit to the tenant's application, I decline to award her recovery of the filing fee.

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 28, 2012.

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Residential Tenancy Branch