



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement.

One of the tenants and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order for money owed or compensation for damage or loss?

### Background and Evidence

The parties agree that this tenancy started on September 30, 2011. Rent for this unit is \$850.00 per month and is due on the first day of each month in advance.

The tenant testifies that before taking this rental unit they asked the landlord questions about the building. The tenants wanted to be assured that this building had no pest

problems, disruptive pets were not allowed, that this was a mature building which had no drug problem, and that the building had quiet tenants who did not hold disruptive parties. The tenants also wanted to know that repairs would be carried out in a timely and proper fashion.

The tenant attending testifies that shortly after moving in around October 15, 2011 one of the neighbors across the hall had two small aggressive dogs who barked continually day and night. The tenant testifies that he required a quiet place to study and the other tenant had to get up early to go to work. The tenant testifies that these dogs barked at traffic and people walking by in the hallway. The tenant testifies that the dog's owner worked night shifts from around 10 p.m. to 4 a.m. and the dogs would bark continuously through the night. The tenant testifies that they tried to block out this noise with earplugs but were unsuccessful. The tenant testifies that he spoke to the male landlord about this issue on many occasions but the male landlord told the tenants to be patient.

The tenant testifies that the landlord said he could not do anything with just one tenant complaining. The tenant testifies he also complained to the landlord about these dogs being off the lease in the hallways and the dogs being aggressive towards the tenant. However the landlord just defended the dogs. The tenant testifies that he asked the landlords to come to the unit around 2.00 a.m. to hear how loud the dogs were barking but the landlords would not come out.

The tenant testifies that in January 2012 the landlord met with the owner of the dogs and the owner bought shock collars for the dogs. This was effective for about one month however the owner then stopped using the collars and the barking continued. The tenant testifies that he called the police continually but they could not deal with the problem without the owner being there. The tenant testifies that eventually they gave up asking the landlords for help as the landlords did not seem willing to resolve this problem. The tenant testifies that eventually in July, 2012 the tenants called the Humane Society and they came out and assessed the dogs. The tenant testifies from that time they could no longer hear the dogs barking at night.

The landlord attending testifies that the tenants did inform the landlords about their issues with the other tenant's dogs. The landlord testifies that the dog's owner had been a tenant for two years before these tenants moved in and no other tenants had ever complained about the dogs barking. The landlord testifies that when her husband (the other landlord) was in the hallway he could not hear the dogs barking. The landlord agrees that the other landlord did speak to the owner of the dogs and owner of the dogs did get shock collars for the dogs.

The landlord testifies that after watching the tenants' video they sent in evidence the video does not show the dogs are barking continually and only a quiet bark is heard towards the end of the video. The landlord testifies that the other tenant does work night shifts but is in his unit in the evenings. The landlord testifies that they did walk the hallways in the evening on a Sunday or Monday night but experienced no dogs barking.

The tenant testifies that some of the other tenants in the building and on the same floor as the tenants are chronic pot smokers. These tenants generally work in the day and when they come home they smoke pot and sell pot to each other. The tenant testifies that the smell of pot makes him nauseous and the other tenant is allergic to the smell of pot. The tenant alerted the landlords' to the crime free addendum they could have got the other tenants to sign, but states the landlord have not done so. The tenant testifies that this is supposed to be a non smoking building but the other tenants are allowed to smoke marijuana and cigarettes in their units. The tenant testifies that they continued to complain to the landlord from the middle of October, 2011 but eventually stopped in February, 2012 as the landlords were not doing anything about the issues.

The landlord testifies that after the tenant dropped the issues with the dog barking the tenant moved on to having issues with other tenants drug use. The landlord testifies that they did visit other tenants in their units and while the landlord agrees marijuana is unpleasant the landlord disagrees that it is a chronic problem in the building. The landlord agrees that the smell filters into the hallways but states that they cannot evict tenants because of smells. The landlord agrees the tenant called the police about drug

use and the police came to the building and spoke to the tenants upstairs but did nothing else as the police cannot arrest other tenants if they are not disrupting the building.

The landlord testifies that not all the units are non smoking units. These other tenants do not have that clause in there tenancy agreement but as these other tenants are existing tenants it will not be changed until new tenants move into those units.

The tenant testifies that they had no hot water in their kitchen for three months. The tenant testifies that they continued to have hot water in their bathroom but the water in the kitchen would only reach luke warm temperatures and occasional become hot. The tenants have provided a video clip of the water running. The tenant testifies they complained to the landlord and arranged a date and time for the landlord to look at this issue. The tenant states he stayed in for three hours for this appointment but the landlord failed to attend. The tenant testifies that they got fed up complaining to the landlord and just continued to boil water to do the dishes.

The landlord disputes the tenants claim. The landlord testifies that there is a large hot water tank that services all 24 units. During peak times the tank may run out of hot water. The landlord testifies that the tap in the kitchen is a duel tap and the landlord suggests that the tenants may not have it turned it fully to hot in the video clip. The landlord testifies that the other landlord did go to the tenants unit with a plumber but found no problem with the hot water.

The tenant testifies if the landlord did come with the plumber then they entered the tenants unit illegally without proper notice.

The tenant testifies that the tenants that moved into the upper unit have disturbed the tenants' quiet enjoyment of their rental unit. The tenant testifies that these upper tenants make noise all through the night until 5.00 a.m. The female tenant drinks, smokes and uses drugs and opens and closes their patio door loudly through the night, she yells on

her phone discussing getting high and hammered and stomps around her unit. The tenant testifies that this so badly affected their sleep and work patterns that the tenant started to fail his exams at school. The tenant testifies that he called the police but was told it was the landlords' responsibility. The tenant complained to the landlord and states the male landlord did go and speak to the upper tenants but nothing was resolved and the landlord did not take any enforcement action against those tenants. Eventually the tenant testifies with all the other problems they were forced to find alternative accommodation.

The landlord testifies that when the tenant complained the landlord did go to the building at past midnight on a Sunday and Monday night. The landlord testifies they cannot go on other weekday nights as the landlords have to get up for work. The landlord testifies that they heard no partying or noise. The landlord suggests that these tenants are noise sensitive and in these units you can expect to hear other tenants walking and turning water on. The landlord testifies that once these tenants complained about a neighbour doing dishes. The landlord testifies that the upper tenant is not up till 5.00 a.m. opening and closing the patio door. The landlord testifies they are not going to come over at 2.00 a.m. to investigate these tenants complaints.

The tenant testifies that the teenage son of the tenant living beneath their unit has been doing crack and meths. The tenant testifies that he heard the teenager talking to his friends about doing these drugs. The tenant testifies that by the end of May, 2012 there was such a repugnant smell of drugs in their unit that he had another tenant come up to smell it and they agreed the smell was awful. The tenant complained to the landlord and the male landlord went to speak to the tenant below.

The tenant testifies that on one occasion he was doing his laundry and he saw this teenager with his friends all smoking some type of drug. The tenant testifies he went outside and challenged the group and then called the police. The police came and spoke to the landlord. The tenant testifies that this teenager's bedroom is underneath part of the tenants unit and the smell comes up through the connected vents. The

tenant testifies that he had to cover all the connecting vents with electrical tape. The tenant testifies when he called the police again, the police came to the tenants unit and could smell the drugs. They then went to the teenagers unit but as the teenager would not let the police in they could do nothing about it as they could not force entry.

The landlord testifies that when the tenant informed them he could smell these drugs they were trying to deal with it and spoke to the boy and his father. The landlord testifies that another time the tenant complained that this boy and his friends were making noise so the male landlord spoke to his father and the boys friends were prevented from coming over.

The tenants seek compensation for a loss of quiet enjoyment of their rental unit for the seven months of their tenancy at \$200.00 per month to the total sum of \$1,400.00 due to dog barking noise. The tenants also seek compensation of \$650.00 as they valued their tenancy at \$200.00 per month for four months dealing with drug related issues, no hot water, noise and continual dog barking to a total sum of \$2,600.00. The tenants also seek to recover their moving costs of \$500.00.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to the Residential Tenancy Policy Guidelines # 6 . This guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. At common law, the covenant of quiet enjoyment "promises (as) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant's right to freedom from serious interferences with his or her tenancy.

Section 28 of The Residential Tenancy Act establishes tenants rights to quiet enjoyment, which include, but are not limited to:

- (a) Reasonable privacy;
- (b) Freedom from unreasonable disturbance;
- (c) Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) Use of common areas for reasonable and lawful purposes, free from significant interference.

Historically, on the case law, in order to prove an action for a breach of the covenant of quiet enjoyment, the tenant had to show that there had 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 for the purposes for which they were leased. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control.

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

The tenant bases his claim on a loss of quiet enjoyment to outside factors which the landlords have done nothing to control or prevent. The tenant has complained numerous times to the landlord about a neighbours barking dog and while that problem was temporally resolved it started up again. The tenant also complains about noise from an upper tenant in the early hours of the morning that disturbed the tenants sleep and

the tenants have complained about drug use in the property including marijuana, crack and meth use. The tenants have also complained about a lack of regular hot water to their kitchen for three months.

I am satisfied with the evidence presented that the tenants have suffered with the effects of barking dogs, I am also satisfied that the landlord did eventually speak to the offending tenant about these dogs and reached a solution to control the barking. However this solution only lasted for one month and then the tenants were subjected to the late night/early morning barking again until they took the matters into their own hands and called the Human Society who dealt with the issues.

I am satisfied that the tenants have been subjected to late night/early morning noise from the upper tenants most predominantly the slamming of patio doors which disturbed the tenants sleep. I find the landlord did not act in a manner to protect the tenants' right to quiet enjoyment in this case in a timely or sufficient manner. The landlords refused to attend the tenants unit when this noise took place to determine for themselves how bad the noise was and simply state that the tenants are noise sensitive without fully investigating the issues.

I am satisfied that the tenants have been subjected to the smell from marijuana and by the landlords own admission there are other tenants in the building that do smoke this illegal substance. The landlord stated that they could not evict the tenants for doing this as they cannot put in a crime free addendum to those tenants tenancy agreements as they have been long term tenants. However, it is the landlords' responsibility to protect other tenants from being subjected to offensive smells from drug use by other tenants and I find the landlords did not take the necessary steps to prevent this smell from infiltrating the building.

I am satisfied that the son of the lower tenant and his friends were using some sort of illegal substance who's smell also infiltrated the tenants unit however I am not satisfied as to what this substance was. It is suffice to say however that there was some kind of



drug use in place which unreasonable disturbed these tenants and which the landlord did not take timely action to stop.

I am also satisfied that the tenants experienced a loss of hot water for a period of time. The tenants' claim this loss was over three months and the landlord although notified failed to keep a scheduled appointment to investigate and repair this issue. The landlord argues that there is one hot water tank servicing the entire building and there will be times the hot water runs out. However, the tenants had hot water in their bathroom and only luke warm water in their kitchen so evidently this was not the case that the water had run out.

The tenants have applied to recover their moving costs of \$500.00 however the tenants have not provided a receipt showing the actual costs incurred for moving and consequently, I limit the tenants claim to the sum of **\$250.00**.

In determining the amount by which the value of the tenancy has been reduced, I must take into consideration the seriousness of the situation or the degree to which the tenants have lost the quiet enjoyment of their rental unit and the length of time over which the situation has existed. The tenants also have an obligation to mitigate any loss by continuing to complain to the landlord and if required put these complaints in writing to serve as a time line for any dispute that arises. The tenant has testified that they gave up complaining to the landlord about the dogs in February, 2012 and gave up complaining about marijuana issues in February, 2012. The tenant also agrees they gave up complaining about the hot water issues and just boiled water instead. Consequently the landlords may not have been aware that the tenants' issues had not been resolved to the tenants' satisfaction.

I also find from the tenants claim that there appears to be three claims for similar issues with separate amounts. Therefore it is my decision that the tenants claim will be limited. I award the tenant the sum of \$100.00 per month in compensation for the loss of quiet

enjoyment for the dog barking from October, 2011 to February, 2012 to the sum of **\$500.00**.

I award the tenant a further sum of \$100.00 per month for four months for other noise issues affecting their tenancy to the total sum of **\$400.00**.

I award the tenant the sum of \$100.00 per month for seven months in compensation due to the landlords' inability to deal with drug use by other tenants which affected the quality of these tenants' enjoyment of their rental unit to a total sum of **\$700.00**.

I award the tenants the sum of \$25.00 per month for the three months the tenants had insufficient hot water to a total sum of **\$75.00**.

### Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,925.00** pursuant to s. 67 of the Act. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

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: October 12, 2012.

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Residential Tenancy Branch