



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: MNDC, FF

### Introduction

This hearing concerns an application by the tenants for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

### Issue(s) to be Decided

Whether the tenants are entitled to the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement, the month-to-month tenancy began on November 1, 2011. Monthly rent of \$775.00 was due and payable in advance on the first day of each month, and a security deposit of \$387.50 was collected. By letter dated June 30, 2012, the tenants gave notice of their intent to end the tenancy effective July 31, 2012.

The tenants claim they ended tenancy as a result of persistent noise disturbances from a neighbour and her companion / boyfriend in an adjacent unit, in combination with what they allege was the landlord's failure to act in a timely and appropriate manner in response to their concerns about these disturbances.

The tenants testified that the neighbour moved into the unit in February 2012. They further testified that the neighbour's male companion appears to have effectively also moved into the unit, even while he was not formally a tenant; the tenants argue that occupancy by the neighbour's companion was a breach of the tenancy agreement.

In February 2012 the tenants verbally expressed their concerns about noise disturbances to the resident caretaker; the tenants claimed that some of the disturbance appeared to arise from abusive conduct and behaviour on the part of the neighbour's

male companion toward her. However, it was not until the latter half of May 2012 when the tenants more formally took their ongoing concerns to the attention of the property manager.

The property manager claims that he was aware of a domestic disturbance in March 2012 which involved police being called to the unit. As a result, he delivered a “verbal warning” to the neighbour.

However, following his receipt of complaints from the tenants, the property manager undertook a “brief investigation,” which included “speaking with the tenants of neighbouring units.” The property manager claims that it was difficult to find other residents who could substantiate some of the complaints made by the tenants, however, arising from his investigation he determined that a “substantial disturbance” had occurred on May 27, 2012. In the result, a “final warning letter” was delivered to the neighbour on May 29, 2012.

Subsequently, the tenants informed the property manager of on-going concerns by way of e-mails during the months of June and July 2012. Ultimately, the landlord issued a 1 month notice to end tenancy for cause to the neighbour by date of July 13, 2012, showing August 31, 2012 as the effective end date of tenancy. The property manager testified that the neighbour later vacated the unit at the end of July 2012.

Following from all of the above, in their application the tenants seek compensation in the total amount of \$4,835.99, as follows:

- \$250.00: moving costs
- \$3,885.00: reimbursement of rent for 5 months (5 x \$775.00)
- \$56.00: “noise cancelling headphones”
- \$594.99: rental car
- \$50.00: filing fee

During the hearing the parties briefly exchanged proposals for resolving the dispute, however, this exchange did not lead to a mutually agreeable settlement.

### Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca)

Section 28 of the Act speaks to **Protection of tenant's right to quiet enjoyment**, and provides in part:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

Further, Residential Tenancy Policy Guideline #6 addresses "Right to Quiet Enjoyment," and provides in part:

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. Such interference might include serious examples of:

- unreasonable and ongoing noise;

Based on the documentary evidence and testimony of the parties, I find that the tenants have met the burden of proving there was a breach of their right to quiet enjoyment, and that the value of a limited portion of their tenancy was thereby diminished. Again, I note that it was not until later in May 2012 when the tenants went beyond oral expression of their various concerns to the resident caretaker, and more formally documented and addressed their concerns directly to the property manager. Thereafter, I am persuaded that the landlord acted in a timely fashion and took reasonable steps to respond to the concerns. Steps taken by the landlord included contacting other neighbours in order to gain broader input concerning alleged disturbances from the neighbour's unit, issuing a written warning to the neighbour, and ultimately issuing a notice to end tenancy for cause, which led to the neighbour's departure at the end of July 2012. In short, I am unable to find that the landlord responded to the tenants' concerns with wilful or

reckless indifferent behaviour. Further, I consider that the tenants' experience of disturbance from noise transmission was exacerbated by the wooden (versus concrete) structural nature of the building.

In the result, I find that the tenants have established entitlement limited to nominal compensation in the total amount of \$683.30, which is calculated as follows:

$\$775.00 \text{ (May's rent)} \div 31 \text{ (\# days in May)} = \$25.00 \text{ (daily rent)}$   
 $\$25.00 \text{ (daily rent)} \times 5 \text{ (\# days of entitlement)} = \underline{\$125.00}$

$\$775.00 \text{ (June's rent)} \div 30 \text{ (\# days in June)} = \$25.83 \text{ (daily rent)}$   
 $\$25.83 \text{ (daily rent)} \times 10 \text{ (\# days of entitlement)} = \underline{\$258.30}$

$\$775.00 \text{ (July's rent)} \div 31 \text{ (\# days in July)} = \$25.00 \text{ (daily rent)}$   
 $\$25.00 \text{ (daily rent)} \times 10 \text{ (\# days of entitlement)} = \underline{\$250.00}$

\$50.00: filing fee

### Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$683.30**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and enforced 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: November 16, 2012.

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Residential Tenancy Branch