



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI, MNDC, OLC, RR

### Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

### Issue(s) to be Decided

This is an application to dispute an additional rent increase, a request for a monetary order for \$1075.00, a request for the landlord to comply with the Act, regulations, or tenancy agreement, and a request to allow the tenant to reduce the rent for repairs services or facilities agreed-upon but not provided.

At the hearing the applicant also asked that I deal with a request to cancel a notice to end tenancy, however the applicant has not filed a dispute of the notice to end tenancy on this application, and therefore I will not be dealing with that request.

### Background and Evidence

The applicant testified that:

- The landlord had promised her that she could have a garden at the rental property, however the landlord has never complied with that promise, and therefore she is requesting a rent reduction for loss of value of \$25.00 per month for a total of \$300.00.

- The tenants upstairs said that I could share the garden plot, however they are not good at sharing and therefore she requested to be allowed to put pots along the fence line and the landlord denied her that request.
- The tenant upstairs are also very noisy, and as a result she is woken early in the morning on numerous occasions. It appears as if the tenant is making no effort whatsoever to be quiet.
- There have also been five incidents where the police have had been called because of the loud partying upstairs.
- She requested that the landlord deal with the noise problem, however as far as she knows the landlord has never done anything.
- When she continued with her complaints the landlord sent her a warning letter stating he would no longer mediate the trouble she was having with the above tenants, and threatening to evict her.
- She is therefore requesting compensation of \$775.00, the equivalent of one month's rent, for loss of quiet enjoyment.

The respondent testified that:

- The tenant has always been able to use a portion of the garden in the backyard to plant a garden. That garden plot is approximately 8 x 20' and is to be shared with the other tenants in the rental property.
- He has never told the tenant she cannot have a garden, he simply told her he did not want her planting a garden anywhere other than in the garden that already exists.
- Even offered to allow that garden to be extended to allow more room.
- He does not want different garden plots all over the backyard.
- He did get complaints from the applicant about noise, however when he investigated those complaints and spoke with the other tenants the other tenants deny making any unreasonable noise and claim that it's them who have to walk on egg shells.
- The other tenants state that they are being as quiet as they can be however with even the slightest amount of sound from their rental unit the applicant below bangs on the ceiling.
- They are just making normal household noise, and probably even less than that as they are attempting to be quiet because of her complaints.
- There was one occasion where the police were called when the upstairs tenants were having a birthday party that did get a little bit loud, however he is not aware of any other times when the police have been called.
- He even offered to allow the tenant to move to different identical suite so she would not have anyone living above her however she declined that offer.

In response to the landlord's testimony the tenant testified that:

- She did not want to dig up other parts of the yard she simply wanted to plant a garden in pots along the fence line.
- The other tenants are not good at sharing so she did not feel confident planting a garden in a shared plot.
- The tenants upstairs are being very noisy, and she believes the tenant was walking around the unit with shoes on in the early hours of the morning.
- She has provided a witness letter from her granddaughter who was present on three occasions when this noise occurred.
- She did not want the expense of moving to another rental unit when there was a possibility that someone else noisy could move into the unit above that one. The landlord gave no assurances.

### Analysis

It's my decision that I will not allow the claim for reduction of \$25.00 per month for loss of use of garden plot, because the tenant has admitted that she was offered a shared plot with the other tenants. If the tenant chooses not to accept the offer of a shared plot, she cannot reasonably expect that the landlord should allow her to plant a garden in another part of the yard even if she only wanted to do it in planter pots.

I also deny the claim for loss of quiet enjoyment, because it's my decision that the applicant has not met the burden of proving that the other tenants in the rental property are unreasonably disturbing her.

The other tenants in the rental property claim that they are attempting to be as quiet as possible and that the applicant is just overly sensitive.

Therefore it is basically the tenants word, and the word of her granddaughter against that of the other tenants and is my finding that that is not sufficient to meet the burden of proving who was in the wrong.

The landlord in this case is in the unenviable position of hearing different stories from the two tenants in the rental property; however it is my finding that he has acted reasonably in trying to resolve this issue and therefore I'm not willing to order that the landlord pay any compensation to the tenant for loss of quiet enjoyment.

Conclusion

The tenants claim is dismissed in full without leave to reapply.

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: April 15, 2013

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Residential Tenancy Branch