



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rockwell Management and Gateway Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC OLC RP PSF FF O

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants under the *Residential Tenancy Act* (the “*Act*”) for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, for an order directing the landlord to comply with the *Act*, regulation or tenancy agreement, to make repairs to the unit, site or property, to provide services or facilities required by law, to recover the filing fee and “other”, although details of “other” are already addressed through the remedies requested above.

The tenants attended both the original hearing and the re-convened hearing and gave affirmed testimony. During the original hearing on March 28, 2013, an agent for the current landlord, RM, attended. Agent RM did not attend the re-convened hearing on May 1, 2013. During the original hearing on March 28, 2013, an agent for a previous landlord, CT, did not attend, however, agent CT did attend the re-convened hearing on May 1, 2013. The first hearing was re-convened to allow time for the current landlord and their agent, RM, time to review the tenants’ evidence.

The testimony and evidence of the parties who attended the hearing is summarized below and includes only that which is relevant to the matters before me.

At the reconvened hearing on May 1, 2013, agent CT confirmed that she had received the evidence of the tenants and that she had the opportunity to review the evidence prior to the re-convened portion of the hearing. I find the parties were served with evidence in accordance with the *Act*.

Preliminary and Procedural Matters

During the hearing the tenants indicated that they vacated the rental unit on April 26, 2013. As a result, the tenants requested to withdraw their applications for an order

compelling the landlord to comply with the *Act*, regulation or tenancy agreement, for an order compelling the landlord to make repairs to the unit, site or property, and for an order compelling the landlord to provide services or facilities required by law. The hearing continued with the tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for the recovery of the tenants' filing fee.

Issue to be Decided

- Are the tenants entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The tenancy began on September 1, 2012 when the tenants moved from a different rental unit within the same building. A verbal tenancy agreement was formed and monthly rent in the amount of \$900.00 was due on the first day of each month. The tenants stated that on April 26, 2013, after the start of the hearing on March 28, 2013, and before the re-convened portion of the hearing on May 1, 2013, that they vacated the rental unit. The tenants stated that they vacated the rental unit after providing notice to the landlord on April 7, 2013 due to the male tenant "getting sick" in the rental unit.

The tenants submitted the following monetary claim:

Item A - Loss of quiet enjoyment – no reasonable enjoyment of home calculated at 7 months X \$150.00 per month.	\$1,050.00
Item B - B1: Loss of mail for one year (calculation not provided) B2: Inconvenience and time to get mail from post office (calculated at 50 cents per day X 269 days = \$134.50) B3: post office holding mail (calculation not provided)	B1: \$311.16 B2: \$134.50 B3: \$232.50
Item C - Damage to car	\$560.00
Item D - D1: Lack of heat and hot water (use of our stove and portable heater for 7 days and no hot water for 8 days) plus additional \$50.00 for that time as well (Inconvenience and no notice) D2: Health issues (calculated at \$50 per month rent reduction for 24 months due to lack of responsibility to maintain a safe	D1:\$150.00 D2:\$1,200.00

environment of building...grounds and common areas)	
Item E – Return of filing fee	\$50.00
TOTAL	\$3,688.16

In the tenants' details of dispute, the tenants have claimed for \$3,553.66, however, the actual total of the claims described is \$3,688.16. **I find** that it would be prejudicial to the landlord to increase the amount of the monetary claim during the hearing. As a result, the tenants' claim is limited to the amount specified in the details of dispute, which is listed as **\$3,553.66**.

For ease of reference, I will refer to the each item and sub-item by the description of each item and sub-item described above.

Item A

The tenants are claiming \$1,050.00 comprised of seven months of loss of quiet enjoyment at \$150.00 per month. The tenants testified that over the course of eight months (not seven as the claim indicates) between August to December 2012, and January to March 2013, the landlord failed to address their complaints about the renter in unit 202 and the noise caused by the renter in unit 202.

The tenants had difficulty throughout the hearing recalling specific dates and appeared disorganized when attempting to locate their documents to support their testimony. During the hearing, the tenants were asked to present their evidence in order from the earliest event to the most recent event. The tenants were unable to do this during the hearing.

The tenants referred to document 9 submitted in evidence dated September 17, 2012 as the first letter sent to the landlord regarding their loss of quiet enjoyment. The tenants claimed that they faxed this letter to agent CT; agent CT denied having received the fax from the tenant. In document 9 the tenants write in part that in relation to this portion of their claim that there have been threats to the building and to people coming to the building from the renter in unit #202 and that further to their phone call earlier in the month advising of this issue, that the tenants have been awoken at 4:00 a.m. and have been disturbed by sounds of a subwoofer coming from unit #202. The tenants write that they are unable to enjoy their living space and ask for something to be done as they have the right to enjoy their home.

A document dated October 4, 2012 was submitted in evidence. In that letter, agent CT writes:

“...Regarding the maintenance concerns that you list, we are prioritizing repairs that need attending to in the common areas of the building and we will be referring back to your specific concerns in due course.”

The next letter that the tenants testified they wrote to the landlord was dated November 6, 2012. Agent CT disputed having received a second letter from the tenants on that date. According to agent CT, a letter of complaint was received from the tenants on November 26, 2012.

The female tenant testified that “I think it was August 25, 2012 that the (renter) in #202 woke me up”. The female tenant stated that she called agent CT later in the morning to advise of this concern. Agent CT does not recall the phone call on August 25, 2012 but does recall the tenants complaining about the renter in unit #202 in general.

Agent CT testified that she mailed the renter in unit #202 a breach letter on November 8, 2012 and subsequently sent two more breach letters to the renter in #202 regarding noise concerns, but was unable to provide those dates.

According to the tenants, the renter in unit #202 vacated their rental unit on April 7, 2013 and the tenants vacated their rental unit shortly after, on April 26, 2013.

The following is a summary of the documentary evidence submitted by the tenants in relation to this portion of their monetary claim:

Date	Details of tenants' concerns
October 11, 2012	4:10 a.m. Tenant in 202 screaming on balcony and yelling “I’m gonna beat you” and was banging. Tenants spoke to property manager to advise of concerns and tenant wrote a letter and placed it in tenant 202’s door.
October 13, 2012	Tenant in 202 yells that he is going to slit the managers’ throat.
October 14, 2012	Tenant in 202 had subwoofer on early in the morning and tenants were awoken due to the loud noise.
October 15, 2012	Called agent CT, no response. Left another message.
October 23, 2012	Woken up at 4:00 a.m. to tenant in 202 screaming and banging on walls and thrashing things on the floor. Later at 3:30 p.m. subwoofer noise resounding through our suite.
October 24, 2012	Spoke with new manager regarding issues related to tenant in

	<p>202. Described loud subwoofer noise, screaming and threats, and not much response from manager.</p> <p>Later at 4:45 p.m. subwoofer noise again, so disturbing, no peace, tired of having dinner with loud bass shaking walls.</p>
November 6, 2012	Letter to property management company, property manager and site manager regarding the tenants' letters to them about the tenant in 202 and the threats and noises being made, repair issues and the overall concerns with the building and common areas.
November 8, 2012	Yelling and screaming from tenant in 202. Smashing and throwing things around so hard my picture fell off wall and smashed to the ground. Called manager and he came down to witness situation.
November 9, 2012	Landlord came to our unit to let us know tenant in 202 had been given first warning about subwoofer noise.
November 10, 2012	Subwoofer playing all day from tenant in 202.
November 13, 2012	Subwoofer on again from 5:00 p.m. until 6:30 p.m.
November 16, 2012	Subwoofer on again from 7:00 p.m. until 8:00 p.m.
November 21, 2012	Subwoofer playing again from tenant in 202
November 22, 2012	Subwoofer and music playing loudly. Started at 12:40 p.m.
November 27, 2012	Subwoofer going again in unit 202.
November 28, 2012	Yelling and throwing of items coming from unit 202 at 3:30 p.m. Tenant in 202 says that he is moving and that everyone in the building is a "write off".
December 4, 2012	<p>Woken up in the middle of the night to loud banging and screaming from unit 202. Subwoofer began at 9:30 a.m.</p> <p>Also on December 4, 2012 the tenants write to agent CT and write in part that they want to thank her for her response to the issues they have been having with the tenant in 202. The tenants wanted to correct the date of the agent's letter from November 26, 2012 to November 12 as "its now only Nov12" yet the letter is dated December 4, 2012. The letter describes ongoing concerns regarding the tenant in 202 and that each landlord has been made aware of their concerns. The tenants also write that they were advised by a landlord agent to "Call the police, I don't get payed enough to deal with that" [reproduced as written]. The tenants also ask "How long do we have to live in fear and discomfort before something will be done"?</p>

December 6, 2012	Subwoofer been going all day. Volume increased at 5:00 p.m. Telephone call to manager explaining that we have had enough with the subwoofer, yelling and screaming and enough is enough, if something is not done, will see you at arbitration.
December 7, 2012	Letter to agent CT providing the tenants new phone number. Letters indicates at 12:30 p.m. subwoofer on again. Appears nobody taking responsibility to speak to these tenants. Son of tenants saw agent of landlord in building today but nothing done. Can't enjoy meals, watch TV or do any kind of home enjoyment or peace. Can't have windows open to enjoy fresh air, watched the glass in my china cabinet vibrate and has already broken picture off my wall. We have rights under the Act to reasonable peace and enjoyment of our home. We want a response asap.
February 12, 2013	Letter to Manager DC regarding noise from tenant in unit 202 indicating that subwoofer noise started at 1:00 p.m. This is not the first time this unit blasts their music. I have written many complaints to head office. I have had to call the police a couple times. I have spoken and written a letter myself to the tenant in 202. For some time he stopped using his subwoofer but has started again. We are entitled to reasonable peace and enjoyment of our home. Please advise in reasonable time as to what you will do to correct this issue.
February 15, 2013	Letter to Manager DC. As to our previous conversations and letter this morning stomping going on and subwoofer started at 10:30 a.m. from unit 202. Requesting to be contacted regarding their need for quiet enjoyment of their rental unit.
February 18, 2013	Tenant in 202 yelling and kicking things around.
February 21, 2013	9:10 - Tenant in 202 screaming and kicking things around.
February 22, 2013	9:30 – Tenant in 202 hammering, chiseling, sawing and banging and throwing what sounds like plywood onto the balcony.
February 23, 2013	Visit from Manager, DC. Asking us to write a letter regarding unit 309 as he has an arbitration hearing. Also discussed tenant in 202. Later in day, subwoofer noise from unit 202.
February 24, 2013	Tenant in 202 subwoofer noise again after tenant's mother assured us that she had disconnected the subwoofer.
February 25, 2013	Wrote letter to Manager DC, explaining disturbances from tenant in unit 202 on February 18, 21, 22, 23 and 24, 2013. The tenants write that they don't feel safe and continue to expect you will be

	taking our pleas for action on these issues seriously.
February 27, 2013	Subwoofer noise and movement of subwoofer to a different room at 10:00 p.m. in unit 202.
February 28, 2013	Subwoofer in use again in unit 202
March 3, 2013	Scraps of paper being dropped from unit 202 above. No concern or respect of others by tenant in 202.
March 4, 2013	Manager DC attended in the early morning standing in doorway and said that really is loud in relation to the subwoofer noise from unit 202. We were surprised at his response as he heard the noise a few times before. Said he was going upstairs to deal with the noise. Later the tenants heard the tenant in 202 swear at them.
March 6, 2013	Heard tenant in 202 swearing again at us.

Although landlord agent DC is a named respondent, I note that agent DC did not attend the hearing although deemed duly served.

Item B

The tenants are claiming \$311.16 for the loss of mail for one year, although a calculation was not provided as to how they arrived at that amount. The tenants are also claiming \$134.50 for the inconvenience and time it took them to travel to and from the post office to retrieve their mail, calculated at 269 days times 50 cents per day. The tenants are also claiming \$232.50 for costs related to the post office holding their mail.

The tenants were unable to clearly articulate this portion of their claim or present supporting evidence during the hearing. Furthermore, the tenants were unable to set out how they arrived at the monetary amount being claimed for each of the items and appeared to be unprepared for this portion of their claim during the hearing.

Item C

This item relates to the tenants' claim for \$560.00 regarding damage to their car. The tenants did not present evidence in support of this portion of their claim during the hearing.

Item D

Sub-item D1 refers to the tenants' claim for \$150.00 for lack of heat for 7 days, and no hot water for 8 days, including the inconvenience this caused and that there was no notice provided by the landlord that the tenants would be without heat or hot water.

Agent CT did not dispute this portion of the tenants' claim during the hearing. A Notice submitted in evidence dated October 16, 2012 from the landlord addressed to all residents indicates that repairs to the heat exchanger in the boiler room were unsuccessful and that the landlord is unable to access the required parts until the following day and that heat and hot water will be restored by the following afternoon and apologizes for all the inconvenience.

Sub-item D2 refers to the tenants' claim for health issues being claimed in the amount of \$1,200.00. The female tenant confirmed that she did not submit any medical evidence to support that she suffered from health issues. The male tenant stated that since the first hearing, he submitted evidence in support of this portion of their claim, however, that evidence was excluded as it was submitted after the hearing commenced which results in that evidence being late. Evidence that is not submitted in accordance with the Rules of Procedure is excluded from consideration and the late evidence submitted by the tenants was not submitted in accordance with the Rules of Procedure.

Item E

The filing fee will be addressed later in this decision.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenants to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the tenants must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the tenants did everything possible to minimize the damage or losses that were incurred.

Item A

The tenants are claiming \$1,050.00 comprised of seven months of loss of quiet enjoyment at \$150.00 per month. The tenants testified that over the course of eight months (not seven as the claim indicates) between August to December 2012, and January to March 2013, the landlord failed to address their complaints about the renter in unit #202 and the unreasonable disturbance cause by the renter in unit #202.

The tenants were unable to clearly articulate when they wrote to the landlord to complain about their loss of quiet enjoyment, as the agent CT, disputed some of the testimony of the tenants that they had received specific letters from the tenants. The tenants did provide evidence, however, of ongoing issues by way of journal-type entries by date and included many specific details about the impact the tenant from unit #202 was having on them and when they communicated with the landlord about their concerns.

Residential Tenancy Branch policy guideline #6 – Right to Quiet Enjoyment, states that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. In addition, policy guideline #6 also states that a landlord would not normally be held responsible for the actions of other renters unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of the problem and failed to take reasonable steps to correct it.

In the matter before me, the landlord confirmed that they were aware of concerns of the tenants in relation to the renter in unit #202. Landlord agent DC did not attend the hearing to dispute the testimony of the tenants.

I find that based on the testimony of agent CT, and the undisputed testimony of the tenants, that the landlord and agents for the landlord were aware of the tenants' concerns regarding the unreasonable disturbance from unit 202 generally. On the balance of probabilities, **I find** that the landlord and agents for the landlord were also aware of the tenants concerns regarding the landlords' lack of response in relation to unit 202 and the tenants' claims that they were suffering from a loss of quiet enjoyment during the tenancy due to unit 202.

I find the tenants failed to provide sufficient evidence that they suffered a loss of quiet enjoyment for the months of September 2012 and January 2013 as the documentary evidence submitted in evidence did not have entries for those months.

I find the tenants did provide sufficient evidence and met the burden of proof that the landlord was aware of the ongoing disturbances coming from unit 202 for the months of August 2012, October 2012, November 2012, December 2012, February 2013, and March 2013 and failed to take reasonable steps to address the concerns of the tenants. **I find** that on the balance of probabilities, the tenants suffered a loss of quiet enjoyment due to the unreasonable disturbance caused by the ongoing subwoofer noise and threats made by the tenant in unit 202 during the months described above.

Section 28 of the *Act* states:

Protection of tenant's right to quiet enjoyment

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

(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.

[emphasis added]

I find that the landlord failed to take reasonable steps to correct the problem with unit #202 by not sending a letter to the renter in unit #202 until November 8, 2013 and failed to provide sufficient evidence of their follow-up responses after that date. Given the

above, **I find** the landlord breached section 28(b) of the *Act* as a result. Therefore, **I grant** the tenants their claim of \$150.00 per month for the six months described above for a total of **\$900.00** as compensation for the loss of quiet enjoyment suffered due to the actions of the renter in unit #202 and the subsequent breach of section 28 of the part of the landlord by failing to address the tenants' concerns related to the unreasonable disturbances.

Item B

The tenants are claiming \$311.16 for the loss of mail for one year for which a calculation was not provided as to how they arrived at that amount being claimed. The tenants are also claiming \$134.50 for the inconvenience and time it took them to travel to and from the post office to retrieve their mail, calculated at 269 days times 50 cents per day. The tenants are also claiming \$232.50 for costs related to the post office holding their mail.

As the tenants were unable to clearly articulate this portion of their claim or present supporting evidence during the hearing, **I find** the tenants have provided insufficient evidence in support of this portion of their claim. It is the responsibility of the tenant to prove their claim and losses they claim to have suffered. Furthermore, the tenants were unable to set out how they arrived at the monetary amount being claimed and appeared to be unprepared for this portion of their claim during the hearing. Therefore, **I dismiss** this portion of the tenants' claim without leave to reapply, due to insufficient evidence.

Item C

This item relates to the tenants' claim for \$560.00 regarding damage to their car. The tenants provided insufficient evidence to support this portion of their claim that the landlord breached the *Act* resulting in damage to their car. Therefore, **I dismiss** this portion of the tenants' claim, due to insufficient evidence.

Item D

Sub-tem D1 refers to the tenants' claim for \$150.00 for lack of heat for 7 days, and no hot water for 8 days, including the inconvenience this caused and that there was no notice provided by the landlord that the tenants would be without heat or hot water.

Agent CT did not dispute this portion of the tenants' claim during the hearing. Documentary evidence submitted supports that the landlord advised the residents of the building that heat and hot water were not provided in October 2012 due to problems associated with the boiler system. A Notice submitted in evidence dated October 16,

2012 from the landlord addressed to all residents indicates that repairs to the heat exchanger in the boiler room were unsuccessful and that the landlord is unable to access the required parts until the following day and that heat and hot water will be restored by the following afternoon and apologizes for all the inconvenience.

On the balance of probabilities, I accept that the tenants suffered a loss of heat for 7 days and loss of hot water for 8 days. **I find** that the amount being claimed of \$150.00 is a reasonable amount for the number of days the tenants were without heat and hot water. Therefore, **I find** the tenants have met the burden of proof and **I grant** the tenants **\$150.00** as compensation for the loss of heat and hot water.

Sub-item D2 refers to the tenants' claim for health issues being claimed in the amount of \$1,200.00. The female tenant confirmed that she did not submit any medical evidence to support that she suffered from health issues. The male tenant did not submit medical evidence in accordance with the Rules of Procedure, so that evidence was excluded from the hearing. Therefore, **I dismiss** this portion of the tenants' claim without leave to reapply, due to insufficient evidence or excluded evidence.

As the tenants were partially successful with their application, **I grant** the tenants the recovery of their **\$50.00** filing fee.

I find that the tenants have established a total monetary claim of **\$1,100.00** comprised of \$900.00 for loss of quiet enjoyment, \$150.00 for loss of heat and hot water, and the \$50.00 filing fee. **I grant** the tenants a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,100.00**. This order must be served on the respondents and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the tenants have established a total monetary claim of \$1,100.00 comprised of \$900.00 for loss of quiet enjoyment, \$150.00 for loss of heat and hot water, and the \$50.00 filing fee. I grant the tenants a monetary order pursuant to section 67 of the *Act* in the amount of \$1,100.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: May 17, 2013

Residential Tenancy Branch

