



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNDC, OLC, FF, O

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the conference call hearing and the landlord's agent also called one witness. The parties and the witness gave affirmed testimony, and both parties provided evidentiary material prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?  
Has the tenant established that an order that the landlord comply with the *Act*, regulation or tenancy agreement is warranted?

### Background and Evidence

The tenant testified that this fixed term tenancy began on August 24, 2012 and was to expire on August 31, 2013, however the tenancy ended on October 31, 2012. Rent in the amount of \$1,750.00 per month was payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$875.00, all of which has

been returned to the tenant with the exception of the cost for carpet cleaning which the tenant consented to.

The tenant further testified that on September 18, 2012 the tenant gave the landlord notice to vacate due to noise in an upper rental unit. On September 20, 2012 the tenant went to stay with a friend for 3 weeks, and then moved out of the rental unit on October 15, 2012 having paid rent for the entire month. Throughout the rental period the tenant was bothered with extreme noise. New tenants moved into the rental complex at midnight. The tenant called police who advised that other tenants had already called.

The tenant has not had any peace or enjoyment of the rental unit due to loud noise and stomping. The tenant is only able to sleep 3 or 4 hours per night. The landlord was called who sent a spouse to check and no noise was heard. The landlord and spouse then went on a 3 week vacation to Europe on or about August 31, 2012 and didn't return until after the tenant had provided the notice to vacate. While they were gone, a temporary manager was looking after things but didn't reside in the building. The tenant didn't want to call that person at night to attend but called the landlord's office and left messages for 3 or 4 nights and sent an email on September 4 and another on the 5<sup>th</sup>. The tenant also sent a letter. The letter contained a spreadsheet showing the dates and times of noises. The tenant received a reply from the landlord company stating that if the tenant didn't stop complaining, the tenant would have to move out for breach of a material term of the tenancy but the letter didn't indicate what material term had been breached.

The tenant also referred to the landlord's evidence which contains an email wherein the landlord's agent acknowledges the noise. It also refers to noise complaints made by the tenant in a previous tenancy, and the tenant testified that those complained about were evicted. However, no one from the landlord company ever attended the tenant's rental unit to witness the noise. Three notices were provided to tenants by the landlord company including the rules and regulations of the complex which all state that noise is not permitted after 10:00 p.m. but no one has actioned it. Copies of those rules and regulations were provided by the landlord for this hearing.

When asked why the tenant didn't call the emergency line, the tenant replied that an agent of the landlord told the tenant that line was for mechanical or structural emergencies only.

The tenant was also asked why the tenant did not accept the landlord's offer to move into another unit on the top floor when one became available, to which the tenant replied that it would take too long for one to become available.

After staying with friends for 3 weeks, the tenant stayed in a hotel from October 11 to 15 and moved out of the rental unit on October 15, 2012.

The tenant stated that the duration and frequency of the noise was unacceptable, and the landlord's threat of evicting the tenant was also unacceptable. Further, the building was not staffed with experienced personnel while the managers were out of the country. The tenant claims recovery of rent for the months of September and October, 2012 in the amount of \$3,500.00; moving expenses in the amount of \$1,384.37; recovery of the hotel stay at \$639.07; \$50.40 for mail; \$33.54 for the cable move fee; \$50.35 for the second half of October's cable bill; \$13.8 for the hydro move fee; \$8.03 for the second half of October's hydro bill; and \$12.00 for the second half of October's gas bill; for a total of \$5,691.65.

The landlord's agent testified that noises that are not heard by others are impossible to prove. Staff went to other tenants about noise, and those tenants felt harassed and no issues were noted. The agent did not have any involvement until the tenant had moved out, but stated that 24 messages were left on the machine at the landlord's office by the tenant.

The landlord's agent also testified that the tenant was sent a letter on September 7, 2012 and a copy was provided for this hearing. The letter states that noises were investigated and were deemed not enforceable and that no further action would be taken. However, the landlord offered to relocate the tenant to a top floor unit once one became available or allow the tenant to end the tenancy without penalty.

The landlord's agent further testified that the tenancy agreement contained a liquidated damages clause which required the tenant to pay an amount if the tenant did not reside in the rental unit until the end of the fixed term. The tenant was not charged the liquidated damages and was sent a letter acknowledging that the tenant was offered \$875.00 for half a month's rent for the latter half of October when the tenant did not reside in the rental unit. The tenant did not accept that. A copy of the letter was provided for this hearing, and it also states that the tenant's concerns were investigated and other neighbours were interviewed who stated there were no noise issues. No other noise complaints were received during the tenancy or since the tenant moved out.

The landlord's witness testified to going on vacation on August 26, 2012 and new tenants were moving in about 2 days later. The witness resides in the building. Upon returning, the temporary manager left emails from the tenant about the noise issues. The newer tenants apologized for the first night moving in but disagreed that other

nights were problematic. The tenant's rental unit has been re-rented and there have been no issues reported and the new tenants still live there.

### Analysis

The *Residential Tenancy Act* states that anyone who makes a claim against another party must do whatever is reasonable to reduce the damage or loss suffered. In this case, the tenant was offered another rental unit when one became available. The tenant believed that would take too long, but I have no evidence before me that the parties discussed how long that would take. I find that the tenant made that assumption when denying the landlord's offer. I further find that the tenant ought to have called the emergency line but didn't do so when the managers were away on vacation.

The landlord allowed the tenant to break the lease without charging liquidated damages even though the tenancy agreement provided for liquidated damages. The landlord also returned the security deposit without a dispute.

I further find that the tenant has failed to establish that the landlord could have or should have done anything more than the landlord did in rectifying the tenant's complaints. The other tenants were spoken to and noises were investigated. The landlord also went the extra step in interviewing other neighbouring tenants and no issues were noted. Also, no issues have been reported by new tenants.

In the circumstances, I find that the tenant has failed to establish any monetary claim as against the landlord.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed 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: May 24, 2013

