



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNDC FF O

### Introduction

This hearing dealt with an application by the tenant for monetary compensation. The tenant, counsel for the owner of the unit, the owner and an agent for the property management company participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

### Background and Evidence

The tenancy began in March 2012 as a one-year fixed-term tenancy, and ended in March 2013 at the end of the fixed term. The rental unit is a condo in a strata building, and the landlord named on the tenancy agreement is a property management company that the owner hired to manage the tenancy. The owner purchased the condo in 1994 and lived there in 1994-1995 and again from 1998 until March 2011, when she hired the property management company to rent out the unit.

### *Tenant's Evidence*

The tenant stated that she sought monetary compensation of \$125 per month for each month of the tenancy, on the basis that her quiet enjoyment of her tenancy was seriously disturbed by "alcohol fueled and psychotic outbursts from the neighbour residing directly above" her. On March 2, 2012, the tenant first contacted the landlord to

report a disturbance. The tenant continued to express her growing concerns about the resident in the condo above her throughout March and April 2012. The tenant not only described noise disturbances until early hours of the morning, but also expressed fear for her safety at the violent tone of the male resident. The tenant described having trouble sleeping, suffering panic attacks and losing time at work. The tenant received information from other residents in the building that this man's behaviour had been going on for several years.

The tenant complained to the landlord again in June 2012, and the landlord's response to the tenant was that their hands were "totally tied" because the male resident owned his condo. The tenant wanted to break her lease but was informed that if she did so she may lose part or all of her damage deposit if she did so.

In December 2012 the tenant made a formal complaint to the strata management company, and they requested that the tenant continue to report specific incidents to them while they sought legal counsel on how to deal with the situation.

At the end of the tenancy the tenant asked the owner if they would be disclosing full details of the upstairs neighbour to prospective tenants, and she never received a response. The tenant stated that as a result of the upstairs neighbour's behaviour, she suffered stress, an ulcer and mental health issues.

### *Landlord's Response*

Most of the evidence in response to the tenant's claim was provided by the owner of the unit. The owner stated that while she lived in the unit she took action on two occasions regarding the neighbour upstairs, once in April or May 2010, and the second time in November 2010. The first time she called the police because the man was shouting loudly and she was concerned there might be a fight going on. The second time she called the police again, and was informed that the first time she called, the man had been drunk. The tenant who resided in the unit prior to the tenant, from August 2011 to February 2012, did not make any complaints for noise or otherwise. The owner therefore believed that she did not have any reason to disclose any issues to the tenant at the outset of the tenancy.

In regard to the tenant's claim, the landlord submitted that the tenant only complained to the landlord twice, once in April 2012 and once in December 2012, and in any case none of this was under the landlord's control. The landlord advised the tenant in April 2012 that she should contact the strata to register any noise complaints.

The landlord submitted that the tenant did not provide evidence of her medical bills or any other medical reports, or any evidence of missed work, to support her claim. The landlord maintained that the applicant's claim was totally unsubstantiated.

### Analysis

I accept the tenant's evidence, supported by emails between the tenant and the landlord, that she raised the issue of disturbances by the upstairs resident on more than one occasion, and particularly during the first two months of her tenancy. I accept the tenant's evidence, supported by the owner's own experience, that the upstairs resident was prone to causing excessive noise and using violent language such that it was necessary to call the police.

The landlord had the responsibility to safeguard the tenant's right to quiet enjoyment of her rental unit, and I find, based on the email correspondence, that the landlord did not take adequate steps to investigate and ensure the tenant's quiet enjoyment. Instead, the landlord shifted the responsibility to the tenant. For this reason, I find that the tenant is entitled to some compensation for loss of quiet enjoyment.

However, the tenant could have taken steps, earlier in the tenancy, to apply for dispute resolution to seek an order that the landlord comply with the Act and ensure the tenant's quiet enjoyment and she did not. Further, the tenant did not provide clear evidence of her medical issues and costs she incurred as a result of the landlord's failure to address the problem. I therefore find that the tenant is entitled to only a nominal award, in the amount of \$150.

I find that as the tenant's application was only minimally successful, she is not entitled to recovery of her filing fee.

### Conclusion

I grant the tenant an order under section 67 for the balance due of \$150. This order may be 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: June 3, 2013

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Residential Tenancy Branch