



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, O

### Introduction

This hearing dealt with an application by the tenant seeking a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

### Issues to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The tenancy began on or about December 27, 2008. Rent in the amount of \$625.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$312.50.

The tenant gave the following testimony:

The tenant stated that the tenants that live above her have caused her to lose the quiet enjoyment in her home. The tenant stated that the tenants above her binge drink for three or four day's straight and make noise, argue, swear, and throw things around until they pass out for an hour, then the cycle begins again. The tenant stated that the local police have attended on four occasions and that the male tenant above her was arrested and was given bail conditions not to be in the company of his female roommate or to be on the property. The tenant stated that this issue has been ongoing since the people moved in. The tenant is seeking \$1000.00 for the loss of a quiet night's sleep and the negative impact it's caused on her health and her home based business.

The landlord gave the following testimony:

The landlord stated that he disputes the tenants claim in its entirety. The landlord stated that he has made numerous inquiries with all of the other 10 tenants in the building as to whether the subject tenant is correct in her accusations. The landlord stated that one tenant mentioned they had heard noise coming from that section of the building but was unsure of where it originated. The landlord issued letters to the tenants on several occasions asking if they had any issues with the tenants that the subject tenant was complaining about; he received no complaints.

The landlord stated that since the subject tenant moved in she has had an issue with each tenant that lived above her and that she seems to have ongoing personal issues with at least one tenant all the time. The landlord stated that the subject tenant called the police each time and that he challenges her allegation of “no go or no contact orders”. The landlord stated that the subject tenant originally complained that the male tenant was building things in his unit. The landlord stated that he has inspected the unit and there were no tools or items being built whatsoever. The landlord stated when he spoke to the tenants above the subject tenant; their response was the subject tenant is a bully.

### Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant made many accusations of loss of quiet enjoyment. The tenant made reference to many other issues of drug and sex trade activity going on in the building in regards to other tenants. The tenant did not satisfy all four grounds above as required, specifically grounds #1, #2 and #3. I found that the tenant provided insufficient evidence to support her claim. The landlord was clear and concise throughout the hearing. The landlord stated numerous times that he made inquiries about the tenants above the

subject tenant and found them to be quiet and not of any concern. The tenant made references to police reports that would support her claim however those reports were not before me.

Based on all of the above I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed.

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 06, 2013

---

Residential Tenancy Branch

