



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

OPC, CNC, MNDC, OLC, O, MNSD, MNR, FF

### **Introduction**

This hearing dealt with an application submitted by the landlord seeking an Order of Possession based on the One-Month Notice to End Tenancy for Cause dated October 31, 2013 and monetary compensation. The hearing was also convened to hear the tenant's application seeking to cancel the One-Month Notice to End Tenancy for Cause and a claim for monetary compensation.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

At the outset of the hearing, the parties advised that the tenant had since given Notice to vacate the unit as of December 31, 2013. Therefore I find that the landlord is entitled to be granted an Order of Possession effective December 31, 2013. As the matter regarding the One-Month Notice to End Tenancy for Cause has become moot, there is no need to determine this matter. However, the hearing proceeded with respect to the tenant's claim for monetary compensation.

The landlord's request for monetary compensation is premature as the tenancy has not yet ended. Therefore, the landlord's claim for compensation is severed and dismissed with leave at this time.

### **Issue(s) to be Decided**

Is the tenant is entitled to monetary compensation for damages to the suite?

### **Background and Evidence Notice to End Tenancy**

The tenancy began on March 1, 2013 with rent of \$1,000.00. A security deposit of \$500.00 and pet damage deposit of \$500.00 was paid.

The tenant testified that they are claiming compensation for loss of quiet enjoyment because the tenant had been subjected to unreasonable disturbance and significant interference by noise caused by other residents in the complex.

The tenant testified that there has been a problem with noise that has disturbed the tenant throughout her tenancy. According to the tenant, her complaints have gone unresolved and the noise was allowed to continue.

The tenant testified that the landlord had attempted to terminate her tenancy in the past, but was unsuccessful. During a hearing held on October 28, 2013, the arbitrator found that the tenant's conduct in complaining about noise disturbance did not justify the landlord's Notice ending the tenancy.

The tenant testified that, because she was forced to move due to the disturbances, she feels that compensation for her moving costs and loss of quiet enjoyment is warranted as her daily life was impacted by unreasonable noise during the tenancy.

The landlord testified that the tenant's complaints about unreasonable noise and disturbance were without merit.

According to the landlord, the noise level was in the range of normal living activities and rarely occurred after-hours. The landlord pointed out that the tenant complained incessantly about being disturbed, but upon investigating, the landlord established that the noise was not excessive.

The landlord testified that, on one occasion, the tenant called the police about alleged excessive noise in the early evening. The complaint to police was in regard to a business gathering that the landlord held in a different suite in the complex. The landlord testified that the police determined that there was no noise disturbance. The landlord stated that the tenant apparently has a sensitivity to noise.

### **Analysis**

It is important to note that in a claim for damage or loss under the Act, the burden of proof is on the claimant, that being the landlord, to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that, under the Act and the agreement, each tenant is responsible to ensure that they do not unreasonably disturb or significantly interfere with other tenants.

Section 28 of the Act protects every tenant's right 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; and
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the Act, I find that a tenant is entitled to expect, at the very least, to be permitted to engage in normal living activities without being unduly restricted. This applies to both the tenant and other residents sharing the complex.

I find that the reciprocal rights of multiple residents in a complex must be balanced against one another. Although there is a fundamental expectation that each resident's living space will be buffered from receiving or transferring excessive sounds between the rental units, I find that, even when a rental accommodation has been *sufficiently sound-proofed*, there will be times when people in one unit will be able to detect sounds from another unit. However, the fact that a sound can be heard does not necessarily mean that it constitutes unreasonable disturbance.

I further find that the landlord is limited in their ability to demand that any resident find a way to control the volume or frequency of their activities when these activities constitute normal living.

Based on the evidence, I find that the tenant could hear music and other sounds coming from other units and I accept that the tenant found this to create an intolerable environment for this tenant.

That being said, I do not find that the tenant has sufficiently met the burden of proof to justify compensation, because the tenant has not established that the noise was unreasonable to the extent that it constituted a violation of the Act.

In order to justify compensation under section 7 of the Act, I find that a tenant must establish that the other party or the landlord has committed a violation of the Act.

Accordingly, I dismiss the portion of the tenant's application seeking monetary compensation for loss of quiet enjoyment. The tenant's application is dismissed in its entirety without leave.

The landlord is granted an Order of Possession based on the tenant's written Notice to vacate effective December 31, 2013.

The portion of the landlord's application seeking monetary compensation is dismissed with leave to reapply.

### **Conclusion**

The tenant is unsuccessful in the application and the tenant's monetary claim is dismissed without leave. The landlord is granted an Order of Possession based on the tenant's Notice to vacate.

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: December 18, 2013

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Residential Tenancy Branch

