



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Five Mile Holdings  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OLC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

### Background and Evidence

The parties agree that this tenancy originally started in this building at another unit in August, 2007. The tenants moved to a second unit in February, 2012 and moved to the

unit concerning this arbitration in April, 2012. Rent for this unit is \$1,125.00 per month and is due on the 1<sup>st</sup> of each month.

The tenant testifies that there have been constant disturbances from one of the neighbours units past 10.00 p.m. at night and sometimes into the early hours of the morning. The tenant testifies that she has complained to the landlord about these disturbances and was asked to put her complaints in writing. The tenant testifies that most disturbances involve loud talking late at night, music and slamming of doors.

The tenant testifies that the landlord has not followed through on many of the complaints and has only investigated a few of them. On those instances the tenant called the landlord when disturbances were taking place and the landlord came up and stood outside her neighbour's door in the hallway to hear the noise. The tenant testifies that this door is 20 feet away from the room that has an adjoining wall between the two units. The landlord deemed that the noise was of conversation level only and was not unreasonable; however it was loud in the tenants room.

The tenant disputes that she has sworn at her neighbour but agrees she did bang on the wall to gain their attention as the noise was so loud they could not hear the tenant knocking with her knuckles. The tenant disputes the neighbour's claims in a letter in which the neighbour refers to the tenants unit being sandwiched between two bachelor suites. The tenant testifies that this has no bearing on the noise levels as she has no complaints against the other neighbouring tenant.

The tenant seeks compensation equivalent to one month's rent as the tenant testifies that the landlord has not protected the tenant's right to quiet enjoyment of her rental unit.

The tenant seeks an Order for the landlord to comply with the *Act* in regards to protecting the tenants right to quiet enjoyment.

The landlord disputes the tenants claims. The landlord testifies that she took over as manager of this building in June, 3013. Since then the landlord has had a number of conversations with the tenant regarding noise issues. The landlord testifies that if she was to follow everyone one of these complaints the landlord would be harassing other tenants. The landlord testifies that this is an older building with thin walls and the tenant is over sensitive to normal living noise made in adjacent units. The landlord testifies that the tenant's recent complaint about her neighbour talking loudly with a guest was investigated. The landlord did go twice to the neighbour's unit and could hear normal conversation from the hallway which was deemed to be reasonable. The landlord did ask the neighbouring tenant and their guest to be mindful of the other tenant and of the thin walls. The neighbouring tenant's guest informed the landlord that the tenant had been pounding on the wall and swearing at them. The landlord testifies that all tenants have a right to have guests over and have a right to talk to them. This tenant must be reasonable about what is normal living noise.

The tenant testifies that she is not concerned about normal living noise but is concerned when the noise reaches higher decibels and is made late at night.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter the tenant has the burden of proof to show that other tenants or guests are making noise that disturbs the tenant at an unreasonable hour that is beyond normal living noise. When one party's evidence contradicts that of the other then the tenant must provide corroborating evidence to meet the burden of proof. Both parties agree that this is an older building and notoriously older buildings do have thinner walls and little sound proofing. I have no doubt that the tenant has been disturbed but without further corroborating evidence that these disturbances are a result of another tenant or guest making excessive noise beyond normal conversations or living noises then the tenant has not met the burden of proof in this matter.

I find the landlord has acted in a manner by investigating complaints made by the tenant; however I would also remind the landlord that they do have an obligation to ensure that every complaint made in writing is investigated.

I have suggested to the parties that when the tenant next experiences what she considers being excessive noise that she inform the landlord and have the landlord enter the tenant's unit to determine if this noise is unreasonable.

The tenant's application for compensation is therefore dismissed. I further decline to make any Orders against the landlord to comply with the *Act* regarding this issue until the tenant has further corroborating evidence to support her claim that the landlord is not protecting the tenant's right to quiet enjoyment.

As the tenant has been unsuccessful in this matter the tenant must bear the cost of filing their own application.

### Conclusion

The tenant's application is dismissed with leave to reapply should further noise warrant a complaint and if the landlord fails to investigate these complaints satisfactorily in order to protect the tenants right to quiet enjoyment.

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: January 28, 2014

---

Residential Tenancy Branch

