



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, ERP, RP, FF

### Introduction

A hearing was conducted by conference call in the presence of the respondent and in the absence of the applicant. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The applicant advised the Residential Tenancy Branch by letter which was received on March 25, 2014 that he would not be attending the hearing as he has enrolled in a First Aid Level 2 course that begins on March 31. He asked that the hearing be continued in his absence and that the letter be considered as an explanation of the situation.

This is a very unusual request. The evidence presented by the applicant was not under oath and by failing to be present he was not in a position to properly dispute the evidence of the landlord. In the circumstance I proceeded with the hearing in the absence of the applicant. Neither party requested an adjournment or a Summons to Testify.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for repairs?
- b. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?

- c. Whether the tenant is entitled to a monetary order?

### Background and Evidence

The tenancy began on June 1, 2012. The tenancy agreement provided that the tenant(s) would pay rent of \$348 per month payable on the first day of each month.

The letter referred to above states the tenant is 64 years of age and is recovering from a liver transplant. It states that “A change of elevator maintenance companies began a serious noise problem. Numerous complaints to the Building Manager were not dealt with. I finally realized, based on the managers’ attitude and conduct that the unresponsive behaviour was deliberate. I contacted the PPM...The same result – not action was taken. There was a lot of what in this day is called Spin. Still not action was taken, She, the PPM told me that the elevator was fixed. I was flabbergasted, disappointed and very frustrated.”

The letter continues and sets out the applicant’s belief that the elevator has not been properly fixed and that he was treated with disrespect and ridiculed. It states that he is spending 80% of his time trying to block out the noise. The Application seeks reimbursement of his rent for the last 8 months plus \$100 per month for cable for a total of \$3536. The tenant has produced a letter from his physician that states he has a number of serious and potentially life threatening illnesses and that is essential that he minimize stress and pollution in his environment. It states he should avoid living close to major roads and factories and states that as the applicant is familiar with the Chilliwack area he should find appropriate housing there as soon as possible.

The representative of the landlord disputes the tenant’s evidence and produced the following:

- City Elevator has completed a brake service on the elevators and found them to be functioning normally. It is City Elevator’s opinion that the noise levels are not abnormal for the application.

- 2013 Maintenance logs for both cars
- 2013 brake test affidavits
- On October 10, 2013 the landlord received a complaint regarding alleged noise from the elevators and contacted Eltec Elevator Ltd. The technician who attended was not certain what specific noises were the source of complaint. They sent their adjustor to the property on October 2013 to review the complaint and he spent over 6 hours on site. Repairs were made.
- On November 14, 2014 the applicant complained and Eltec was called and adjustments made.
- On November 22, 2013 the landlord spoke to a property inspector from Vancouver City. He investigated the alleged noise and was satisfied that BC Housing is maintaining the elevator in working order.
- The landlord has responded to complaints and both elevators are within their normal noise parameters.

The representative of the landlord further testified that she has not had complaints from any other residents in the rental property about the noise of the elevators. The applicant submitted a request for a transfer which was received on January 22, 2013. The application was approved. However, the tenant was advised that his application has limited his request for transfer to Non Profit organization and BC Housing has not authority to influence their applications. The applicant was advised that if he expanded the properties he was looking for he would have a greater opportunity to getting a transfer.

### Analysis

This is a difficult case as the applicant has stated he was not intending to attend the hearing and he did not appoint anyone to act on this behalf. After carefully considering all of the evidence I determined the applicant has failed to prove the elevators have caused excessive noise for the following reasons:

- The technicians who have attended have produced evidence that the elevators are within their normal noise parameters.
- The building inspector from the City of Vancouver has inspected the elevators and has determined the landlord is maintaining the elevator in working order.
- The tenant failed to present evidence from third parties that would dispute or contradict the documentary evidence produced by the landlord.
- There is no evidence of other residents complaining about the noise from the elevators.
- The applicant did not attend the hearing and as a result it was not possible to test his evidence under cross examination.

#### Conclusion

**In conclusion I determined the applicant has failed to prove his claim and as a result I dismissed the claim for monetary compensation, a repair order and a reduction of rent.**

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: March 31, 2014

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Residential Tenancy Branch

