



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation for loss – Section 67;
2. An Order for the Landlord’s compliance – Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions. At the onset of the Hearing, the Tenant stated that she is no longer seeking the Landlord’s compliance as the matter has been resolved however the Tenant maintains her claim for compensation in relation to the matter.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

### Background and Evidence

The tenancy started in June 2012. Rent of \$525.00 is payable monthly.

The Tenant states that in approximately November 2012 another tenant started making noise at nights but that as the Tenant was in school at the time, her sleep disturbances from the noise did not affect her. The Tenant states however that when she started work in July 2013 the noise to early hours of the morning resulted in her losing sleep, being late for work and giving up extra shifts. The Tenant states that she made an oral

report of the problems to the Landlord on November 9, 2013. The Tenant states that at this point the disturbances would occur approximately twice a month but that in December 2013 after having experienced three nights in a row of loud noise and commotion the Tenant called the police and made a written report to the Landlord. The Tenant states that the emergency contact provided by the Landlord refused to pass on her complaints of noise to the Landlord and that her only option left was to call the police. The Tenant states that she was told by the Landlord that there was nothing that could be done because of the procedures they had to follow and to call the police again if the disturbance occurred again. The Tenant states that the Landlord finally provided her with another contact number for her calls at night and over week-ends. The Tenant states that the Landlord provided an empty unit as a temporary place to sleep should she be disturbed again but that she only slept there once as the other four times that she was disturbed her daughter was sleeping and the Tenant did not want to wake her to move. The Tenant states that she purchased an inflatable mattress at a cost of \$77.14 for her to sleep on in the empty unit. No evidence of lost income was presented. The Tenant claims \$400.00 in compensation for her loss of peaceful enjoyment of the unit.

The Landlord states that following the Tenant's complaint in November 2013 a notice to end tenancy for cause was served to the Tenant in December 2013 with an effective move-out date of January 31, 2014. The Landlord states however that after meeting with a community group and the other tenant they came to a mutual agreement that resulted in the tenant being placed on a three month probation period. The Landlord states that this other tenant is elderly and that the disturbances came from family or company that was visiting. The Landlord states that no other complaints were received from the Tenant until February 11, 2014 and that this complaint resulted in the end of the disturbing tenancy as of March 31, 2014. The Landlord states that the Tenant was offered a furnished unit to live in temporarily for February and March 2014 in another building about two blocks away but that the Tenant declined this offer. The Landlord states that the furnished unit was a higher grade unit than the unit the Tenant is currently living in.

The Tenant states that she was disturbed during January 2014 but did not make any complaints as she believed that the tenant would be moving out of the unit at the end of January 2014 and that the Landlord did not inform her of the agreement that was reached to allow this tenant to remain. The Tenant states that when she became aware that this tenant was not moving the Tenant resumed her complaints about the noise. The Tenant states that she did not accept the offer of the furnished unit as the Tenant works shifts and as her babysitter lives in the same building the Tenant felt that moving to another building temporarily would inconvenience the baby sitter.

### Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. I accept the Tenant's evidence that she was significantly disturbed by another tenant. I also accept that the Landlord acted reasonably to address the noise problems by providing a notice to end tenancy to the offending tenant. Given the circumstances of the offending tenant, I find the Landlord again acted reasonably to attempt to resolve noise issues by offering the offending tenant another opportunity. For these reasons I find that the Tenant has not substantiated that the Landlord acted negligently. Further, following the provision of the second notice to end tenancy, I find that the Landlord's offer of alternate units to be a reasonable offer in mitigating any damage to the Tenant that may occur while waiting for the offending tenant to move. As the Tenant chose to accept an unfurnished unit as opposed to a furnished unit, I find that the Tenant incurred all further losses by her choice and not as a result of any act or negligence of the Landlord. I therefore dismiss the Tenant's claim for compensation.

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: April 24, 2014

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Residential Tenancy Branch

