



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, OLC, PSF, RR, FF, O

### 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;
3. An Order for the Landlord to provide services or facilities – Section 65;
4. An Order for a rent reduction – Section 65; and
5. 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 under oath.

### Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to a rent reduction?

Is the Tenant entitled to services or facilities?

Is the Tenant entitled to the Landlord’s compliance being sought?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy of a basement unit in a house started on February 1, 2011. Rent of \$950.00 is payable monthly.

The Tenant states that the unit is not insulated between the upper unit and that since moving into the basement unit, there has been noise from the upper tenants' daily activities. The Tenant states that despite asking the Landlord to remedy the noise levels the Landlord has not done so, other than to speak to the upper tenants when the noise rises above normal levels. The Tenant states that she has lived in other units with shared walls but has never lived in a basement unit and has never experienced the noise from other tenants such as current. The Tenant states that there was no discussion about noise between the units at the outset of the tenancy. The Tenant agrees that the Landlord has acted appropriately in relation to high noise levels but is not otherwise happy with the Landlord's actions. The Tenant states that she is willing to remain in the unit while the Landlord makes renovations to insulate the noise level. The Tenant claims compensation for the past loss of her quiet enjoyment in the amount of \$900.00 and a continuing rent reduction of \$50.00 per month until the noise levels are resolved.

The Landlord states that the upper tenant has complained as well about noise from the Tenant's daily activities and that since previous tenants did not complain about the noise between the levels, the Landlord believes that the problem arises from different lifestyles between the current upper and lower tenants. The Landlord states that the majority of the house is sealed and that there is no way to determine if insulation exists between the levels but feels that the sounds carry through the interconnected duct work. The Landlord states that it is not a reasonable expectation to be free from noise from normal activities when living in a basement unit. Further the Landlord states that he is not obligated to insulate the unit to provide a noise free unit.

The Tenant states that despite having garbage removal included in the tenancy agreement and having 3 bins available for both units since the onset of the tenancy the number of bins was reduced in October 2013. The Landlord agrees to provide the Tenant with her own garbage bin for May 1, 2014 and the Tenant accepts this resolution to her claim.

The Tenant states that the Landlord requested that the Tenant remove her belongings stored on her patio covered by the upper deck for December 1, 2013 for renovations to the upper deck. The Tenant states that the renovations did not start until January 13, 2014 and although completed by Feb 17, 2013 the renovations resulted in the loss of her patio covering. The Tenant states that she no longer has a covered patio as the renovations resulted in open slats and that she has to continue to store her belongings in the yard covered by plastic. The Tenant claims \$150.000 for the past loss of a dry patio during the preparation and construction period claimed from December 2013 to February 2014, inclusive. The Tenant states that as a solution the Landlord could provide her with a storage shed.

The Landlord states that the Tenant was informed at the outset of the tenancy that the upper patio would be renovated leaving slats and that the Tenant did not state any objections. The Landlord states that delays to the construction were as a result of the contractor's availability. The Landlord states that during the preparation and construction the patio remained useable as a patio and continues to remain useable. The Landlord states that he is not obligated to provide dry storage on the patio.

The Tenant states that during the renovations she was subjected to noise from 10:00 am to 5 or 6 pm on a daily basis and as she works in the unit, she was disturbed. The Tenant claims \$50.00 for the loss of quiet enjoyment during the construction period.

### 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.

Section 32 of the Act provides that, having regard to the age, character and location of the rental unit, a landlord must make a rental unit suitable for occupation by a tenant. The unit is located below an upper unit in a house. While there is no dispute that the Landlord has acted appropriately to address excessive noise levels between the units, there is also no dispute that daily activity noise comes from each unit and that the Landlord receives complaints from both units about these noises. I therefore find that the Tenant has substantiated unreasonable noise between the units. However considering the lack of evidence of income loss as a result of the noise and noting the length of time that has passed since the noise started, I find that the loss is not as great as claimed and that the Tenant is only entitled to a nominal and global amount of **\$200.00** in compensation for past loss. Noting that the Landlord has done nothing in the past and to address compliance in remedying the problem, I find that the Tenant is entitled to a future rent reduction of **\$25.00** per month commencing May 2014 and ongoing until such time as the Landlord has reduced the noise from daily activities or the tenancy has ended. I note that the Landlord is not required to reduce the noise entirely and suggest that an indication of reasonable noise level may occur when complaints are no longer received from both units.

Accepting that the Tenant has use of the patio as a patio, considering the Landlord's evidence that the Tenant was informed of the renovations to the upper deck and accepting that there is no requirement to provide a covered patio or storage in the tenancy agreement, I find that the Tenant has not substantiated any loss of use of the patio and I dismiss this claim.

Given the Tenant's believable evidence of disturbance from the renovations, I find that the Tenant has substantiated reasonable compensation of **\$50.00**. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total rent reduction on May 1, 2014 of **\$325.00**.

Conclusion

I order the Tenant to deduct \$375.00 from May 2014 rent and \$25.00 per month thereafter in full satisfaction of the claim.

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 22, 2014

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Residential Tenancy Branch

