



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding COMMONWEALTH HOLDING CO. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, OLC, RP, FF

### Introduction

The tenants apply for a monetary award for loss of enjoyment in the rental unit caused by pipe noises, a broken heating system, window repairs, toxic fumes and persistent heavy cigarette smoke or odour.

Their application also discloses a request for a compliance order but the attending tenant Mr. L. informed the hearing that the tenants were leaving at the end of May 2015 and so a compliance order was not pursued.

The tenants also seek the cost of moving.

During the hearing, Mr.L. withdrew the claim regarding cigarette smoke and odour.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenants have suffered a loss of enjoyment or amenity in the rental unit during the tenancy or have been forced to move by the landlord's action or inaction?

### Background and Evidence

The rental unit is a one bedroom apartment in a 62 unit apartment building.

The tenancy started in June 2013 for a one year fixed term and then month to month. The current monthly rent is \$1281.00, due in advance on the first of each month. The landlord holds a \$625.00 security deposit and a \$625.00 pet damage deposit.

Mr. L. testified regarding five particular problems during the tenancy.

First he says that from the very inception of the tenancy he and Ms. K. have been bothered by “rattles” and “pops” in the wall between the kitchen and living room of the apartment. He indicates that the sounds correspond to occasions when he turns the water on or when the tenants above or below use water.

The tenants provided a video clip of the sound, taken in October 2014, which reproduce a sound like someone chopping vegetables on a wooden board or the stamping of papers with a date stamp. The sound can be heard at about five second intervals and at other times at about one second intervals.

Mr. L. says that the caretaker, Mr. F.G. heard the water pipe sounds early on in the tenancy and said “let’s keep an eye on it.

The tenants reported the sound to the landlord in a letter of March 16, 2014 indicating that the sound “is driving us insane.”

In the same letter the tenants reported their discontent with another sound, a banging sound, coming from the heaters, mostly during cold weather. This I take to be the second aspect of their claim. While Mr. L. described them as electric or baseboard heaters, I am satisfied that the heating system is a hot water system with heat radiating from hot water pipes running all the bottom of exterior walls. A plumber called by the tenants described it as “water hammering” and told the tenants it could be fixed but would cost a lot of money.

The tenants also provided video clips of the water hammering sound, taken February 12 and 13, 2015, which reproduce the sound as an occasional “clank,” one occurring early in the morning hours. A third video clip was presented, showing a baseboard, but the “clank” was not reproduced on it.

Mr. L. says the sound wakes Ms. K. and him up in the winter, when the sound is most prevalent. He says he’s tried ear plugs but that they are ineffective.

Mr. L. indicated in a letter to the landlord dated March 6, 2014, that “clicking” sounds from the heaters have resulted in the needed use of prescription drugs with severe side effects, in order to get to sleep at night.

On January 27, 2015, the tenant reported to the caretaker that the banging sound, the heater sound, had got “crazy worse,” banging every twenty minutes. This is the third aspect of the claim. He sent the caretaker audio clips of the sound.

The tenant Mr. L. says the landlord sent its plumber J to investigate in late February or early March 2015 and that J heard the sound.

It is agreed that at that time the landlord replaced a “zone valve” in the heater system in an attempt to abate the problem. The tenant Mr. L. says the banging is still occurring and claims for three months of compensation for the annoyance. Mr. L. testified that between hearing dates the landlord’s workman installed a new part and the noise is less. As well, with warmer weather, the noise is decreasing.

As the fourth aspect of the claim, the tenant Mr. L. testified that in October 2013 the landlords upgraded the windows in the building and that for about four weeks during this work there was a gap of about three inches in breadth between the outer wall/window and the wall dividing his bedroom from the bedroom of his neighbour. He says that if one placed one’s head next to the wall, the interior of the other tenant’s room could be seen. He says that the goings on in the other bedroom were clearly audible during that time and that on occasion pot smoke would waft into his suite. He acknowledges that at that time he made no complaint to the landlord but simply accepted it.

As the fifth aspect of the claim, the tenants allege they were exposed to “toxic fumes” for a three day period in October 2014. The landlord’s workmen had been refinishing a wood floor in the apartment below. The tenant Mr. L. says that fumes from the coating chemical infiltrated his suite and he could smell then for three days. He says he called the head office and left a message about the problem. He says he is sensitive to oil paint and paint thinner because he has had “oil poisoning” when he worked as a painter himself.

As a result of the fumes Mr. L. says he slept with all the windows open even though it was cold. He says he was trapped in his apartment with his dog for three days because he could not use the washroom to shave and shower. Because he could not shave and shower he would not go out in public because he is “not that type of person” and would have felt like a “homeless person.” He says that he could not go to a hotel during the three day period because he does not have a credit card.

It was during this incident that the tenant Mr. L. first spoke to Mr. R.D., who attended the hearing and who is a senior person in the landlord’s organization. It appears that various of the tenant complaints and concerns were discussed at that time.

A considerable portion of the tenants’ evidence related to the problem of cigarette smoke and odour likely being emitted in the suite below and wafting into the applicant

tenants' suite. The tenant Mr. L. withdrew this claim, stating that as he himself is a smoker or occasional smoker, it would be hypocritical of him to pursue it.

The landlord's representative Mr. R.D. testified that the apartment building is a concrete high rise built in about 1964.

He says that in the last six years the water lines have been replaced entirely.

He filed a history of written interaction with the applicant tenants since the start of the tenancy.

He says that the windows of the building were all replaced in late 2013. He acknowledges that there was a gap between the tenants' unit and the next, but that it was only one or two inches wide and was there for only sixteen business days.

He testifies that when he spoke to the tenant Mr.L in October 2014 the tenant set out a number of complaints including the pipe noise, smoke from below but he concluded the tenant was "overly sensitive" and not very credible.

Mr. R.D. says that J the plumber has been the plumber for the building for over 50 years. J has been in the suite dozens of times and that the "knocking sounds" were never replicated when either J or the caretaker Mr. F.G. were there. He says they have tried to recreate the conditions of the water pipe noise by turning on the water taps upstairs but have not been able to do so.

He says that the landlord has never been contacted to witness the noise complained of at the time of its occurrence. He says he has never received the audio clips he has requested of the tenants.

He says only one other suite tenant has notified them of pipe sounds and that it was not "an issue" with that other tenant.

He denies that the fumes from the floor refinishing in the suite below were "toxic" and produced information materials about the coating used on the floors. He says that the caretaker went to the suite and didn't find the smell abnormal.

Mr. F.G. the caretaker testified about "zone valves" in the hot water heating system and how sometimes they can become sticky and make noise. He says that he has never heard heating pipe noise in the tenants' suite but had the zone valves replaced two or three times "just in case."

Mr. F.G. says he has never heard the water pipe noise complained of either, nor has he ever received a similar complaint from any other tenant but for one and that issue was resolved by the installation of a “shock absorber.”

He confirms the gap created during the window installation was about one to two inches and that a person could not see around it.

Mr. F.G. referred to his three page statement filed in this matter and swore to it as an accurate history of this matter.

It was his view that though the applicant tenants were pleasant, he considered Mr. L. to be a “chronic complainer.”

The tenant Mr. L. responded in detail to the landlord's. Of note, he says that both J and Mr. F.G. have heard the banging pipe noise but that the noise was most often in the middle of the night.

### Analysis

I have reviewed and considered all the relevant evidence presented at this hearing though all of it might not be referred to in this decision.

Regarding the water pipe noise I find that it not an abnormal noise in an older building such as this. On the evidence, it is not a particularly annoying noise and is, as the landlord's representatives stated in their letters to the tenants, a building sound that one becomes accustomed to.

I am influenced by the fact that over the sixteen months of considerable correspondence about the applicant tenants' complaints about other tenant noise and complaints about noise from the applicant tenants' suite, very little mention is made about this noise.

Over the period of this tenancy the tenants have made many complaints about other tenants' actions and noise. It is reasonable to assume that if either the water pipe noise or the heating noise were persistent issues, more mention of them.

I dismiss the tenants' claim for compensation regarding the water pipe noise.

In regard to the heating system noise, I again note the lack of consistent complaint over the length of this tenancy and the evidence of the landlord's people that they never heard it. The evidence does not show that the sounds were more than an occasional sound one might expect in a building of this age.

However, I accept Mr. L.'s evidence that in January 2015 the clanging sound from the heating pipes increased significantly. The tenants' audio evidence confirms that a loud clanging sound was coming from the heating pipes.

It was at this time, in late January, that the tenants provided audio proof to the landlord about the increased noise. The fact that the landlord's personnel may have sent the tenant Mr. L.'s email to a junk folder or not listened to it is beside the point. The tenants were officially notifying the landlord of the problem. The landlord should properly have investigated the complaint. Had it done so conscientiously I find that it would have witnessed the clanging noise.

The clanging noise is random and it is loud. It is likely coming from the heating works and not from another tenant or suite.

I find that the noise is a significant interference with the tenants' enjoyment of the suite. The noise would, in my view, awaken a very sound sleeper.

There is little evidence from the tenants about any particular occasions of being disturbed by the sound. Nevertheless, I find they are entitled to some award for the disturbance. For the time period January 2015 to the April 15<sup>th</sup> date of this hearing I award the tenants \$300.00 as general damages resulting from the heat pipe noise.

In regard to the window gap claim, I note that the tenants made no complaint to the landlord about it at the time. Had they made known the fact that they considered the gap to be a disturbance or inconvenience the landlord may well have taken steps to eliminate or reduce the problem. I consider it to have been only a minor inconvenience suffered by and accepted by the tenants at the time. I dismiss this item of the tenants' claim.

In regard to the floor refinishing issue, I find the tenant Mr. L.'s evidence to be confusing. On the one hand he was of the view that the fumes were poisoning both him and his dog. At the same time, he remained in the suite for three days for reasons that seem to relate exclusively to his appearance. I conclude that the toxic fumes incident was of a minor nature and an event normally associated with the landlord's ongoing obligation to maintain and repair, during which, some inconvenience must be expected.

The tenants also claim for moving expenses for their anticipated move. I must dismiss this item of the claim. Had the tenants proved the entirety of their claims perhaps it could be seen that the landlord's failure to attend to the alleged problems was driving the tenants out. However, with the tenant's report that the clanging has recently been diminished and in light of my decision on the other aspects of the claim, moving expenses are not awarded.

### Conclusion

The tenants are entitled to a monetary award of \$300.00. I award them recovery of \$50.00 of the filing fee.

I authorize the tenants to reduce their May 2015 rent by \$350.00 in full satisfaction of this award.

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, 2015

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Residential Tenancy Branch

