



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

MNDC OLC

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on March 27, 2015, seeking to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement and an Order to have the Landlord comply with the Act, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant. Each party gave affirmed testimony and confirmed receipt of evidence served by each other.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the testimony and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Tenant proven entitlement to monetary compensation?
2. Has the Landlord been found not to be complying with the Act, regulation or tenancy agreement?

### Background and Evidence

In support of his application for monetary compensation for noise issues, the Tenant submitted a four page written submission outlining his concerns about noise and other issues along with copies of three letters that had been sent to him from the Landlord regarding repairs.

The Landlord submitted documentary evidence in response to the Tenant's application which included, among other things, copies of: a two page typed submission dated March 30, 2015, outlining the tenancy agreement and events relevant to the Tenant's application; security logs between March 7 and March 25, 2015; the tenancy agreement; and letters to the tenant who resides in the rental unit directly above the Tenant.

It was undisputed that the Landlord and Tenant entered into a month to month tenancy that began on August 1, 2013. Market rent is currently \$560.00 and the Tenant's current subsidized

rent is \$387.00 and is payable on the first of each month. On July 31, 2013, the Tenant paid \$272.00 as the security deposit.

The Landlord submitted evidence that the rental unit is located in a wood and concrete building that constructed in 1983 operated by a housing society whose mandate is to house the homeless, or those at risk of being homeless, and consist primarily of hard to house tenants who may suffer from addition or mental health issues.

The Tenant testified that since sometime in February 2015 he has been dealing with noise coming from the unit directly above him. He indicated that he thought the noise was being caused by the upstairs tenant's girlfriend. He reported the noise complaints by telling the night time security staff and the Tenant support worker.

The Tenant indicated that he had not put his noise concerns in writing and only told the security staff of subsequent noise problems on a few occasions, despite the noise waking him at all hours of the night and several nights during every week. He described the noise as being caused by the upstairs patio door slamming closed; a chair dragging across the floor, and things like a plastic bottle being dropped on the floor. He noted that there was only a concrete floor in the upstairs rental unit and no carpet.

The Landlord submitted that the Tenant had reported his complaints to the night staff in March 2015, who upon investigation did not hear the loud noises as described by the Tenant. Once the Landlord was made aware of the issues with the upstairs tenant's guest, they assisted that guest in finding accommodation elsewhere and on March 25, 2015 they band the guest from their building.

The Landlord stated that had they known the noise issues were continuing they would have attended to those issues. She noted that the upstairs tenant was issued his final warning at the end of April 2015 and if they continue to have problems with him they will be evicting him.

The Tenant clarified that the noises wake him up and he cannot go back to sleep so he ends up hearing everything. He stated that he normally tolerates the upstairs tenant and his noise which is another reason why he has not put his complaints in writing.

In closing, the Landlord identified that the Tenant had submitted documentary evidence that did not relate to the noise complaint issues. She submitted that the Tenant's rent is paid by Income Assistance so if compensation is awarded it should go to Income Assistance; receipts are not issued for rent unless the rent is paid in cash, which is not the case here; and she requested that the Tenant come and speak to her directly regarding his issues that remain unresolved. She argued that the Landlord will continue to follow up on complaints and will be vigilant in resolving tenant issues.

The Tenant stated that he would continue to bring unresolved complaints to the Residential Tenancy Branch, at which time I explained to the Tenant that he must first attempt to resolve the issues with his Landlord.

### Analysis

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline # 6 provides that temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

In this case the Landlord and their staff took immediate action to investigate the oral complaints from the Tenant. As a result the Landlord banned the upstairs tenant's guest from the building effective March 25, 2015. The Landlord's night staff also took reasonable steps to investigate subsequent noise complaints, when they were received. However, the Tenant, by his own admission, did not inform the Landlord or the tenant representative each time that the noise problems occurred.

Upon consideration of the foregoing, and notwithstanding the Tenant's arguments that his sleep has continued to be interrupted, I find there to be insufficient evidence to prove entitlement to monetary compensation at this time. The Tenant has the responsibility to bring concerns to the Landlord in order that they both may work towards a resolution, before filing applications for Dispute Resolution. Therefore, I dismiss the Tenant's application for monetary compensation in these instances.

Section 5(3) of the schedule found in the Regulations stipulates that the landlord must give the tenant a receipt for rent paid in cash. In this case the Tenant's rent is paid directly to the Landlord from Income Assistance. Therefore, no rent receipt is required to be given by the Landlord to the Tenant.

There was no evidence before me that the Landlord has failed to comply with the Act, regulation or tenancy agreement. Accordingly, I dismiss the Tenant's request to Order the Landlord comply.

#### Conclusion

I HEREBY DISMISS the Tenant's application, in its entirety, without leave to reapply.

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: May 08, 2015

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Residential Tenancy Branch

