



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HARO HOLDINGS INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*; served by registered mail on November 26, 2014. Canada Post tracking numbers were provided by the tenant in documentary evidence. The tenant served the landlord with a duplicate package on April 15, 2015. The landlord was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The tenant appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the landlord, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The tenant testified that this month to month tenancy started on August 01, 2006. Rent for this unit is now \$1,050.00 per month due on the first of each month.

The tenant testified that the building started to suffer from problems with raccoons in the summer of 2012. During this time there was a family of raccoons that took up residence on the tenant's balcony. The raccoons caused damage to furniture and belongings on the balcony. The tenant testified that other tenants reported issues with the raccoons to the landlord during this time. Prior to June, 2013 the tenant started to suffer with noise in the roof above her bedroom ceiling from raccoons which had found a way into the roof of the building. This continued a few nights a week. In June, 2013 the noise from the raccoons in the ceiling intensified and resulted in extreme noise three to six nights a week. The noise was so loud with the raccoons running and playing and making noise that it woke the tenant and kept the tenant awake during the night. The tenant ran a fan to try to cancel out the noise and had custom ear plugs made but the noise was so loud it continued to wake the tenant.

The tenant testified that she became so anxious about being woken up it became difficult to get to sleep and this affected the tenant's health. The tenant testified that she had spoken to the manager of the building about the raccoons and then put it in writing by sending an email to the manger on June 03, 2013. The manager responded and informed the tenant and other tenants that she was going to deal with the raccoon problem. The landlord did not deal with the problem and the noise continued throughout each month until December, 2013.

The tenant testified that because the manager kept promising to deal with the raccoons the tenant did not file an application at that time seeking an Order for the landlord to comply with the *Act* and provide a safe, hygienic and peaceful environment for the tenants. The raccoons also defecated and urinated on the tenant's balcony and the tenant could hear them urinating in the roof onto her bedroom ceiling. The manager was made fully aware of the problems the tenant was experiencing from the raccoons but choice not to deal with it. When the tenant called the manager in November, 2013, the tenant was told by the manager that the owners were selling the building and they did not want to put any money into it. When the new owners took over the building in December, 2013 they took immediate steps to rectify the raccoon problem and the raccoons are now gone.

The tenant testified that due to the challenges she faced from a lack of quiet enjoyment and peaceful sleep the tenant did consider moving from her home she had lived in for nine years; however, as the manager kept telling the tenants the problem would be fixed the tenant decided to stay. If the manager had told the tenant that the owners were not going to fix the problem the tenant would have filed an application to force them to protect her peace and quiet enjoyment during the six months the tenant suffered from the raccoons. The tenant testified that she had filed an application previously in 2014 and had a hearing on January 09, 2015. That hearing was dismissed with leave to reapply as the tenant could not provide sufficient evidence to show the landlord had been served at their place of business.

The tenant testified that due to the raccoons and the landlord's inaction in remedying the problem the tenant's tenancy was devalued due to the loss of quiet enjoyment of her rental unit. Due to this the tenant seeks compensation of \$300.00 per month for six months from June to November, 2013.

### Analysis

The landlord did not appear at the hearing to dispute the tenant's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the landlord, I have carefully considered the tenant's documentary evidence and sworn testimony before me.

I refer the parties to s. 28(b) of the *Act* which states:

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(b) freedom from unreasonable disturbance;

The tenant has provided digital evidence in which the tenant has recorded the raccoons on her balcony and the damage caused by them. The tenant has also recorded the noise from the raccoons at night heard in her bedroom. The tenant has provided copies of the email correspondence between the tenant and the manager and other tenants and the manager relating to the tenants' complaints about raccoons and the landlord's response that it will be dealt with soon.

I am satisfied from the undisputed evidence before me that the tenant has certainly suffered from unreasonable disturbances from the raccoons for more than a six month period. I am also satisfied that the tenant has suffered from damage to her belongings and lived with damage to the balcony caused by the raccoons which was not immediately remedied by the landlord. The landlord should have taken immediate steps to bring in a specialist to deal with the raccoon problem in the building. Had the landlord done so the landlord could have prevented further damage to the building and protected the tenant's right to quiet enjoyment of her rental unit. As the landlord failed to take steps to remedy this problem with the raccoons I find the tenant's tenancy was significantly devalued. Consequently, I find the tenant's claim for compensation of \$300.00 a month to be reasonable for the six month period the raccoons seriously disturbed the tenant's sleep. I therefore find in favor of the tenant's application to recover **\$1,800.00** from the landlords who owned the building at that time.

As the tenant's claim has merit I find the tenant is entitled to recover the filing fee of **\$50.00** from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the tenant a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$1,850.00**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: June 17, 2015

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Residential Tenancy Branch

