



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      O, RR

### Introduction

The Application for Dispute Resolution filed by the tenant seeks a monetary order in the sum of \$2700 for the reduced value of the tenancy caused by excessive noise coming from a water heater/plumbing system and a faulty smoke detector alarm.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant acknowledged receipt of the landlord's documents.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business on or about August 31, 2015. With respect to each of the applicant's claims I find as follows:

### Issue(s) to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for the abatement of past or future rent and if so how much?
- b. Whether the tenant is entitled to a monetary order and if so how much?

### Background and Evidence

The tenancy began on approximately 8 years ago. The present rent is \$670 per month payable on the first day of each month. The tenant paid a security deposit of \$300 at the start of the tenancy.

The tenant provided the following relevant testimony:

- She has lived in the rental unit for approximately 8 years without noise difficulties.
- A noise has been coming from her hot water tank that has significantly disturbed her enjoyment of the rental unit. It began at the start of July and stopped sometime at the end of August or early September. She did not keep a daily record of the disruption.
- The noise was daily and intermittent through much of the day. On occasion it would wake her up at night. On one occasion the hot water tank was shaking. Other tenants in the building have had similar problems with their hot water tank.
- She advised the landlord of the problem in early July but the landlord failed to resolve the problem.
- The hot water heater was installed in November 1991. The noise disruptions stopped in early September and she has not experienced problem with the noise since then.
- The smoke alarm has gone off intermittently (4x since it was inspected in May 2015).

The landlord provided the following relevant evidence:

- There was construction on all sides of the building in July and August and he believes the problems relate to the installation of new water mains by outside authorities.
- Around the middle of July he hired a plumber who was not able to do anything as there was no noise when the plumber attended.
- Two electricians checked the property without identifying a problem.
- The smoke alarm was checked and approved by an approved inspection firm on May 13, 2015.
- One of the downstairs commercial tenants provided a letter stating she heard noises from the plumbing in her rental unit in July and August, she hired a plumber who was not able to locate the source and the noise problem has stopped for the last two months.
- The caretaker provided a letter stating the noises were heard from the plumbing for July and August but has not been heard since then. The letter states she has heard the fire alarm go off in the building only once since the smoke detector was inspected on May 13, 2015.

Analysis - Reduction of Rent

Section 28 of the Residential Tenancy Act provides as follows:

**Protection of tenant's right to quiet enjoyment**

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

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Policy Guideline #16 includes the following:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

After carefully considering all of the relevant evidence I determined the landlord has failed to take sufficient steps to ensure the quiet enjoyment of the rental unit for the months of July and August. I am satisfied the noise from the hot water tank and plumbing system was substantial and significant during that period. There has been a significant reduction in the enjoyment of the rental unit. At times the tenant was awakened from her sleep because of the excessive noise. While it is difficult to ascertain the cause of the noise, there does not seem to be a dispute that it came from the internal plumbing system and hot water tank within the building which is the landlord's responsibility. I determined the tenant is entitled to compensation for the

reduced value of the tenancy in the sum of \$150 per month for the months of July and August 2015 for a total of \$300.

I dismissed the claim of compensation for the period after September 1, 2015 and for future rent reduction as the problem has resolved itself and there is no longer a noise problem.

I dismissed the tenant's claim for compensation for the noise from the smoke alarm as this does not have the characteristic of being substantial which is required for the breach of the covenant of quiet enjoyment.

#### Conclusion

**In conclusion I ordered the landlord pay to the Tenant the sum of \$300 in satisfaction of this claim such sum may be deducted from future rent.**

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

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: November 02, 2015

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Residential Tenancy Branch

