



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, O

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the tenant and her son.

The tenant testified the landlord was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on January 19, 2016 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5<sup>th</sup> day after they have been mailed.

The tenant submitted that the package was returned as unclaimed. Based on the undisputed testimony of the tenant, I find that the landlord is attempting to avoid service of these documents. I find the landlord has been sufficiently served with the documents pursuant to the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the loss of quiet enjoyment, pursuant to Sections 28, 67, and 72 of the *Act*.

### Background and Evidence

The tenant submitted that she had moved into the rental unit in June 2012. She stated she had entered into a tenancy agreement at that time but a new agreement was signed on May 28, 2015 for a month to month tenancy for a month rent of \$780.00 due on the 1<sup>st</sup> of each month with a security deposit of \$326.00 and a pet damage deposit of \$326.00 paid. The tenant testified the tenancy ended on February 29, 2016.

The tenant submitted that prior to the current landlord living in the unit upstairs the tenant had no complaints of any disturbances from the people living above her. She

stated that once the current landlord moved into the upper unit, in May 2014, she was constantly being disturbed in her rental unit.

The tenant submitted that as soon as the landlord moved into the unit her dogs started disturbing the tenant and her son by constantly barking and whining. She stated that originally they had 2 dogs and then a third moved into the unit. The tenant submitted that the dogs would be going non-stop all day for as much as 16 hours per day.

The tenant stated that when she complained about these issues the landlord told her that because she was the landlord she could do what she wanted in the unit and the tenant would just have to live with it or leave.

The tenant also stated that for 3 months the landlord was undergoing some construction that caused disturbances during that time. The tenant also spoke of the first 3 months after the landlord moved when the landlord's boyfriend would park his diesel truck and leave it running for 45 minutes at a time. When the tenant complained the landlord responded by telling the tenant to close her windows.

The tenant also stated that the landlord later locked the tenant and her dog out of the backyard that she had previously had access to and that the landlord was constantly harassing her about the tenant having her daughter visit with her own dog or smoke on the property.

The tenant sought compensation in the amount of \$2,400.00 for a loss of quiet enjoyment. The tenant submitted that she determined this amount on first and last month rent plus the potential costs of moving.

### Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: 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 Section 29; and the use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the undisputed evidence and testimony of the tenant and her son I find the tenant has established the landlord has failed to comply with their obligations under

Section 38 of the *Act*. Specifically, I find the landlord deliberately failed to provide the tenant with freedom from unreasonable disturbance.

I also find that as a result of this failure on the part of the landlord to comply with Section 38 the tenant suffered a loss in the value of the tenancy for the 22 months since the landlord moved into the upstairs unit. I find the tenant's claim for \$2,400.00 based on first and last month rent plus potential moving costs is excessive and not based on any substantive criteria.

However, on a monthly basis I find that reasonable compensation, based on the number of months of disturbance and a monthly rate of reduction, could be calculated. Based on the tenant's account of the disturbances I find a \$50.00 per month reduction in the value of rent is reasonable. At this rate for 22 months, I find the tenant is entitled to compensation in the amount of \$1,100.00.

### Conclusion

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,100.00** comprised of a rent reduction of \$50.00 per month for 22 months.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: March 09, 2016

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Residential Tenancy Branch