



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KLAHANIE HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

MNDC OLC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated March 1, 2016 (the "Tenant's Application"), seeking relief under the Residential Tenancy Act (the "Act"). Specifically, the Tenant has applied for an order compelling the Landlord to pay compensation for failing to comply with the Act, the regulations or a tenancy agreement. The Tenant also seeks an order compelling the Landlord to comply with the Act, the regulations or a tenancy agreement.

The Tenant attended the hearing on her own behalf. She was accompanied by an advocate, A.P., who did not provide evidence. M.P. and T.A. appeared on behalf of the Landlord.

The Tenant advised the Landlord was served with the Tenant's Application at the beginning of March 2016. The Landlord confirmed receipt.

Neither party expressed any issues regarding receipt of the others' evidence packages. Both confirm they have had adequate opportunity to review the documentary evidence submitted by the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Is the Tenant entitled to an order for compensation for damage or loss due to a breach of the Act, the regulations or a tenancy agreement by the Landlord?

Is the Tenant entitled to an order compelling the Landlord to comply with the Act, the regulations or a tenancy agreement?

### Background and Evidence

The Tenant provided affirmed evidence on her own behalf. She has resided in the subject rental unit since about 2008. The Tenant says she loved living in the rental unit. However, in April 2015, a new resident moved into the unit directly above the Tenant. The Tenant says the noise coming from the unit above has caused a recurrence of Post-Traumatic Stress Disorder (“PTSD”) symptoms, a loss of employment income, and has decreased her enjoyment of the rental unit.

The Tenant’s evidence was that she immediately tried to resolve the noise issue with J., the new resident. The Tenant found J.’s response unsatisfactory and made a complaint to T.A., who suggested that the Tenant keep a journal. T.A. confirmed the Tenant’s evidence in this regard.

The Tenant’s concerns were summarized in a letter to T.A. dated June 20, 2015, in which she described the period from May 27 to June 20, 2015. Noise complaints included “[t]humps...big bang...[w]alking back/forth...dropping stuff on floor...[y]elling from balcony...walking heavily on floor...toilet flushing...huge boom...yanking/dragging furniture on balcony”. In response, T.A. offered the Tenant an opportunity to meet to discuss the issue. However, the evidence of both parties confirms the Tenant declined to participate in a meeting.

The Tenant followed up with an email to T.A. dated July 29, 2015. In it, she describes feeling “so overtired, nerves shot – I’m not experiencing things the way I would normally.” Again, T.A. responded promptly to advise that, although busy, she would try to schedule another meeting. The Tenant’s oral evidence during the hearing was that she did not wish to participate in the meetings being offered. In light of the response she received when she first approached J., the Tenant did not see the point of further meetings.

Subsequently, on August 18, 2015, T.A. wrote a letter to the Tenant to advise the Board of Directors of the housing society responsible for administering the rental unit (the “Board”) had been made aware of her noise complaints and would be contacting the Tenant to arrange a meeting. The meeting was held with the Tenant in attendance on August 26, 2015. The Tenant advised during the hearing that although the noise did abate for a time, it subsequently resumed.

During the hearing, the Tenant confirmed she responded to the noise by banging on the ceiling with a broom handle, although she says she did not bang on the walls. In a letter from E.K., the President of the Board, dated November 24, 2015, the Tenant was asked to stop doing so. In any event, E.K. offered to meet with both parties in hopes of finally resolving the dispute. Although the Tenant responded to E.K.'s letter on December 7, 2015, the parties gave evidence the meeting did not take place. Rather, the parties confirmed the Tenant had agreed things had improved in the weeks leading up to Christmas and that she did not wish to attend the meeting.

The Tenant provided oral evidence in support of her monetary claim for loss of income from employment. She advised she was working at a business centre, earning \$14.00 per hour. She estimated she has lost about \$1,000.00 per month for 11 months as a result of the noise from the rental unit above.

M.P. and T.A. provided affirmed evidence on behalf of the Landlord. M.P. confirmed that she has met informally with the Tenant on several occasions, including at least one meeting in the Tenant's rental unit. M.P.'s oral evidence was that during these meeting she was unable to hear the noises Tenant's complained of.

M.P. also says she has met with J. on several occasions to discuss resolution. During the hearing, she repeated J.'s position that she is merely making "living noise", and is not as disruptive as the Tenant suggests. M.P. and T.A. also indicated that J. has expressed feeling traumatized and stressed by the Tenant's complaints. J. has applied and been approved for a transfer to another building.

M.P. also provided oral evidence concerning the building in which the rental units are located. She described the building as an older, wood-construction building. There is laminate flooring in the unit above the Tenant's. She concedes these factors may contribute to the transmission of noise in the building.

The Landlord's representatives have indicated their belief the Tenant's complaints may be related to a prior request for a transfer to a more desirable unit on the third floor, although I make no finding in this regard.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find the following:

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with this Act, the Regulations or a tenancy agreement. In this case, the Tenant says noise from the unit above has caused a recurrence of PTSD symptoms, a loss of employment income, and decreased enjoyment of the rental unit. She submits she should be compensated by the Landlord for her losses.

The Tenant, who bears the burden of proving her claim, says she has suffered a recurrence of PTSD symptoms as a result of the noise. However, I find there is insufficient evidence upon which to base a monetary award. The Tenant's claim for compensation on this basis is dismissed.

The Tenant also claims she has lost income from employment. However, the Tenant did not explain how noise from the rental unit above has impacted her employment, and has provided no documentary evidence in support of her claim. For example, the Tenant did not provide any proof of employment or attendance records which might have indicated missed days of work. I also note the Application for Rent Subsidy forms submitted as evidence by the Landlord suggest the Tenant has not disclosed any income from employment since moving into the rental unit. Accordingly, I find there is insufficient evidence upon which to base a monetary award for lost wages. The Tenant's claim for compensation on this basis is dismissed.

The Tenant further claims she has suffered a loss of quiet enjoyment of her rental unit. She says the Landlord has not done enough to ensure her concerns were addressed.

Policy Guideline #6 (the "Guideline") elaborates on the meaning of a tenants' right to quiet enjoyment. It confirms a tenant may file a claim for damages if a landlord fails to take reasonable steps to prevent conduct that amounts to a frequent and ongoing interference. One example of such interference, found in the Guideline, is "unreasonable and ongoing noise". The Guideline also provides that temporary discomfort or interference does not constitute a basis for a breach of the covenant of quiet enjoyment.

I find that in response to the Tenant's complaints, the Landlord took reasonable steps to resolve the noise issue. These steps included several offers to meet with the Tenant and the resident above to try to find a solution, which were declined by the Tenant. The Landlord's representatives also met individually with the Tenant and the resident above, and elevated the Tenant's concerns to the Board. The Landlord's representatives also took the additional step of trying to hear the noises being complained of but could not.

In addition, I find that the age and construction of the building were factors contributing to the transmission of noise in the building, but that the noises were not unreasonable. They were, for the most part, living noises associated with residing in an older building with many other occupants.

Having considered the documentary and oral evidence submitted during the hearing, I conclude the Tenant's application for a monetary order must be dismissed.

Section 62 of the Act permits me to make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement. In light of my finding above, the Tenant's application for an order compelling the Landlord to comply with the Act, regulations or a tenancy agreement is also dismissed.

### Conclusion

The Tenant had insufficient evidence to prove she had suffered the losses alleged. The Tenant's application is dismissed 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: April 20, 2016

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Residential Tenancy Branch