



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC OLC O FF

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for: a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties (2 landlords, landlord's assistant & 2 tenants, and tenants' advocate) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlords confirmed receipt of the tenants' Application for Dispute Resolution as well as additional evidentiary materials. The tenants confirmed receipt of the landlords' evidentiary packages.

### Issue(s) to be Decided

Are the tenants entitled to a monetary order against the landlords?  
Are the tenants entitled to an order requiring the landlords to comply with the *Act*?  
Are the tenants entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters, as well as the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal and most relevant aspects of the tenants' claim and my findings around each are set out below.

This tenancy began on October 1, 2016 as a one year fixed term tenancy with a rental amount of \$1800.00 payable monthly. The landlords continue to hold the \$900.00

security deposit paid by the tenants at the start of the tenancy (October 1, 2016). The tenants sought a \$6750.00 monetary award for loss of quiet enjoyment. Tenant JM testified that the monetary amount equates to 4 months' rent at 75% of each month.

The tenants testified that they believed they would reside in the rental unit long term. They testified that they have encountered problems with their neighbours. They testified that the previous neighbours were mildly difficult but that they moved out. Tenant JM testified that the new neighbours moved at the start of February 2017. These neighbour occupy the upstairs unit in the residential premises (a house) and the tenant and her family live downstairs. She testified that the new neighbour live directly above them and that they are very noisy. She testified that they have become increasingly noisy during the course of their tenancy.

The tenants testified that the upstairs neighbour; have a lot of visitors; drop weights on the floor, bounce ball on their floor; slam furniture; and drag chairs around. The tenants testified that they attempted to befriend the neighbour and attempted to speak with the upstairs neighbour themselves to resolve the noise issues but that the upstairs neighbour is very combative: sometimes, even though he is home, he will not answer the door when they knock. The tenants acknowledged that the house is not well insulated but the tenants believe the upstairs neighbours' noise is excessive. They testified that their family has trouble sleeping. Tenant JM testified that when she first met the upstairs neighbour, as he was moving in, she told him that she has small children and therefore requires a quiet place to live.

The tenants testified that they have children and, beyond the matter of noise at all hours, the upstairs neighbour has, on several occasions, sworn in front of their children. Both tenants testified that to resolve the noise and other issues related to the upstairs neighbour, they asked the landlord to mediate a discussion between the parties but he has not done so in a meaningful way. The tenants testified that they have called the police on more than one occasion because they felt threatened. The tenants testified that, at this point, they just want to be able to end their fixed term tenancy early.

The landlord, through his translator and assistant, testified that the tenants/neighbours upstairs regularly complain about the tenants. He testified that the upstairs neighbours have called the police in relation to harassment by the tenants on three separate occasions. He testified that he attempted to meet with both sets of tenants and mediate the situation but that it was not successful. He testified that the upstairs neighbour has kept a log of the disturbing activities of the tenants. That log was submitted as evidence at this hearing.

### Analysis

Pursuant to section 32 of the Act and Residential Tenancy Policy Guideline No.16, “[the] Legislation allows a landlord or tenant to make a claim in debt or in damages against the other party where there has been a breach of the tenancy agreement or the Act. Damages [are] money awarded to a party who has suffered a loss which the law recognizes.” When a tenancy agreement exists between the landlord and the tenant, both are bound to meet certain obligations. Policy Guideline No. 6 on quiet enjoyment states,

*At common law, the covenant of quiet enjoyment “promis(es) that the tenant . . . shall enjoy the possession and use of the premises in peace and without disturbance. In connection with the landlord-tenant relationship, the covenant of quiet enjoyment protects the tenant’s right to freedom from serious interferences with his or her tenancy.*

And

*A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.*

As the tenants have made an application and a claim that her landlord’s failure to act resulted in her loss of quiet enjoyment, it is her burden to show that loss through evidence submitted to the arbitrator. When considering whether there has been a breach of a tenant’s right to quiet enjoyment, I must consider whether the landlord has created or allowed a substantial interference to these tenants’ enjoyment of their premises. Temporary inconvenience does not constitute a breach of quiet enjoyment - an interference that would give the tenant sufficient cause to end the tenancy would constitute a breach of quiet enjoyment.

In this case, I find that the landlord made efforts to minimize or resolve the issues between the tenants and their neighbor. I find that he met with both parties privately and as a group in hopes of reducing each party’s sense of disruption or inconvenience. I find that the landlord’s steps, in the circumstances, met his obligations under the Act. I find that the landlord’s steps were reasonable to protect the tenants from interferences with their tenancy.

It is reasonable to assume, based on the testimony of all parties at this hearing that each party, including the landlord have been perturbed and disturbed by the ongoing disputes between the two parties. However, the standard with which to consider compensation for loss of quiet enjoyment is that the tenants were subject to **substantial**

**interference** to the tenants' enjoyment of their premises. Based on the all of the evidence before me, I find that the tenants have not provided sufficient evidence to meet the burden of proof, on a balance of probabilities that they were **unreasonably disturbed**. I do not accept the entirety of the tenant's evidence regarding the level of disturbance. I find that both the upstairs and downstairs tenants have contributed to the ongoing dispute. I find that the tenants have not provided evidence of disturbance beyond what is within the realm of the ordinary upstairs/downstairs tenant relationship.

I dismiss the tenants' claim for compensation based on a loss of quiet enjoyment and, as the tenants has been unsuccessful in their application, I find that the tenants are not entitled to recover the filing fee for this application.

### Conclusion

I dismiss the tenants' claim in its entirety.

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 08, 2017

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Residential Tenancy Branch