



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

On July 7, 2017, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), Regulation, or tenancy agreement. The matter was set as a teleconference hearing.

The Landlords and the Tenant attended the hearing. The Landlord was assisted by legal counsel. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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.

### Preliminary and Procedural Matters

The Landlord identified that the legal name of the owner of the property is incorrect on the Tenant’s application. The Landlord provided the correct name of the owner of the property and the Tenant agreed that I amend the Application accordingly.

### Issues to be Decided

- Is the Tenant entitled to compensation for money owed or compensation for damage or loss?

### Background and Evidence

The parties testified that the tenancy began on July 1, 2016, as a one year fixed term tenancy that continued thereafter as a month to month tenancy. At the start of the tenancy, the Tenant paid monthly rent in the amount of \$1,355.00. As of July 1, 2017, the Tenant began paying monthly rent in the amount of \$1,405.14.

The Tenant is seeking compensation from the Landlord due to the loss of use of an elevator, and for a loss of quiet enjoyment of the rental property due to the renovation of a rental unit located on the floor above him.

### Elevator

The Tenant is seeking \$270.00 in compensation for the loss of use of the elevator for the months of July 2016, August 2016, and September 2016. The Tenant submitted that his claim amounts to 10% of the rent for July 2016, and 5% of the rent for August and September 2016.

The Tenant submitted that he lives on the second floor of an apartment building that has one elevator. He testified that his rental unit is close to the stairway and that the laundry facilities are on the next floor down. He testified that it is an inconvenience to move things in and out of his unit and do laundry.

The Tenant testified that he was aware that the elevator was not working when he made the decision to enter into the tenancy agreement. He testified that he did not inquire about the timelines for the repair of the elevator. He testified that he is seeking compensation of 10% of the rent for July 2016, because of the inconvenience of not having an elevator when he moved in. He submitted that he based his claim amount on compensation that was awarded in decisions he found online.

In reply, the Landlords acknowledged that the elevator was broken, but they oppose an award of compensation to the Tenant. The Landlord testified that that Tenant was aware that the elevator was not working when he entered into the tenancy agreement. The Landlord submitted that the Tenant lives only one floor above ground level and the laundry is close by.

The Landlord submitted that the Tenant did not suffer a significant loss and did not mitigate the loss by raising any concern at that time to the building manager. The Landlord submitted that any award of compensation should be nominal.

### Construction

The Tenant is seeking \$2,857.20 in compensation for a loss of quiet enjoyment due to construction noise for the months of May 2017, June 2017, and July 2017. The Tenant's claim amounts to the full amount of rent he paid during the period of time the unit above him was being renovated.

The Tenant submitted that the resident manager approached him to notify him that the unit above him was being renovated. He submitted that the Landlord estimated the renovation would take one month but it took two months. He submitted that the noise above him was significant due to hammering and drilling but submitted there were periods during the renovation where it was less of an issue. The Tenant submitted that the Landlord is responsible for routine maintenance but this was a complete renovation.

The Tenant submitted that he works full time, Monday to Friday. He submitted that he leaves for work around 7:00 am and returns home between 3:30 – 4:00 pm.

In reply, the Landlord's lawyer, Ms. K.H. submitted that the building is an older building and some units need renovation. She submitted that units are renovated when they become vacant and available.

The resident manager, Mr. M.L submitted that the renovation on the unit above the Tenant was extensive and it takes approximately 1-2 months to renovate. He submitted that the work was on and off depending upon the availability of the contractors. He submitted that the bathroom and kitchen were completely renovated; there was new flooring installed; and the unit was fully painted. He submitted that the construction ended between 5:00 – 5:30 pm each day, with work performed on occasional Saturdays.

Mr. M.L. submitted that he did not receive any complaints from other residents of the building. He testified that the Tenant sent him an email on July 6, 2017, regarding his concerns with noise, but the Tenant did not reply to an offer from the Landlord to meet and discuss the issue.

Ms. K.H. submitted that the work was performed in compliance with the hours permitted under the city bylaws.

Ms. K.H. submitted that the Tenant's claim to be compensated for the full amount of rent paid during the period of renovation is excessive. She submitted that the Tenant had full use of the rental unit and was at work and not present in the unit on a regular basis.

Ms. K.H. that the Landlord has an obligation to maintain and repair the rental property. The Landlord referred to the Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment that states it is necessary to balance the Tenant's right to quiet enjoyment with the Landlord's right and responsibility to maintain the premises.

Ms. K.H. pointed out that any inconvenience suffered by the Tenant between 3:30 pm and 5:00 pm was brief. She submitted that the Tenant has the onus to prove a loss attributed to him; not a loss suffered by other occupants within Decisions found online.

Ms. K.H. submitted that the Tenant did not respond to the Landlord's offer to discuss the issue, and therefore he did not make an effort to mitigate any loss. She submitted that if the claim is not dismissed outright, any award should be of a nominal amount.

### Analysis

Section 28 of the Act, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

*Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

*In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.*

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:*

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- **Loss of quiet enjoyment;**
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*

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

#### *Elevator – Loss of Use*

The Tenant was fully aware that the elevator was not working when he entered into the tenancy agreement and made no inquiry on the timeline for repair. I find that having use of the elevator was not important enough, or enough of an inconvenience, to dissuade the Tenant from entering into a tenancy agreement. The Tenant lives on the second floor and I find that the loss of use of the elevator was not significant.

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. Since the Tenant accepted the tenancy knowing that the elevator was not working, I find that the loss of use of the elevator did not put him in a position where he suffered a loss. The Tenant was in the same position for the three month period when the elevator was not working as he was when he entered into the tenancy.

The Tenant's claim for compensation due to loss of use of the elevator is dismissed.

*Construction – Loss of Quiet Enjoyment*

There is no dispute that the unit located above the Tenant was renovated over a period of just over two months. The Landlord was renovating the unit in accordance with their right and responsibility. I accept the Landlord's submissions that they made an effort to minimize noise disruptions to the other occupants, as the majority of the work was performed during the business day in accordance with the city bylaws.

I accept the Tenants testimony that he experienced inconvenience due to noise on the days he was not at work, and when he returned home from work; however, I find that the noise was intermittent. I find that it is reasonable for the Tenant to experience some noise when the Landlord is carrying out responsibilities to maintain the property and renovate rental units in an apartment building. Since the Tenant works full time, I find that the Tenant did not suffer substantial interference to his enjoyment of the premises. I find that the noise was more of a temporary discomfort or inconvenience.

With consideration to the above, I find the Tenant's claim for the full amount of rent he paid during the period of renovation is not reasonable. The Tenant has not substantiated that there was substantial interference to his enjoyment of the property. The Tenant's claim for the full amount of rent is dismissed.

An arbitrator may also award compensation in situations where establishing the value of damage or loss is not as straightforward. Nominal damages may be awarded where there has been no significant loss or no significant loss has been proven, but it has been proven that there has been an infraction of a legal right.

I accept that the Tenant was inconvenienced by noise intermittently over the period of construction which presented a temporary discomfort.

I award the Tenant a nominal amount of compensation for his loss. The Tenant is awarded \$150.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was partially successful with his application for compensation, I grant the recovery of the filing fee and I authorize the Tenant to deduct the amount of \$100.00 from one (1) future rent payment.

The Tenant is authorized to deduct the total amount of \$250.00 from one (1) future rent payment.

Conclusion

The Tenant's claim for compensation due to loss of use of an elevator is dismissed.

The Tenant is awarded \$150.00 as a nominal award for a temporary loss of his enjoyment of the property due to intermittent construction noise.

The Tenant is also awarded the \$100.00 cost of the filing fee.

I authorize the Tenant to deduct \$250.00 from one (1) future rent payment.

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: January 26, 2018

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Residential Tenancy Branch