



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE ROGERS COURT SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** MNDC

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*, for monetary order for compensation for the loss of quiet enjoyment due to noise disturbances emanating from the rental unit located above.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

These parties attended a hearing by conference call on December 19, 2017 to address this dispute. The hearing was adjourned to this date upon request of the landlord and agreement by the tenant. Both parties provided documentary evidence. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Has the landlord fulfilled his responsibilities as a landlord with regard to following up on the tenant's complaints?

### **Background and Evidence**

This tenancy started on September 01, 2016. The rental unit is an apartment located in a building that houses a total of 24 units. The building is close to 50 years old. The landlord is a non-profit society that provides subsidized housing for low income seniors. The tenant testified that when the tenancy started the occupant of the unit above was out of town and returned sometime in October 2016. Upon her return, the noise disturbances from loud television, started. The tenant agreed that the problem was taken care of by the landlord in a timely manner.

The tenant testified that sometime in November, the same occupant of the unit above his unit “activated” a squeaky floor which caused noise disturbances, one to three times a night. The tenant complained to the landlord who contacted the occupant of the unit above in a letter dated November 21, 2016.

The tenant continued to complain about the noise from the squeaky floor above and the landlord testified that each time the tenant complained, he contacted the occupant of the unit above. The occupant informed the landlord that she was doing her best to minimise her movements in the suite between the hours of 11pm and 7am. The occupant also stated that the age and character of the building promoted a great deal of noise transference between suites.

In his written submission, the tenant states that the disturbances continued and that he became sleep deprived and was forced to acquire an alternative place to spend nights at. On December 29, 2016, the tenant provided the landlord with notice to end the tenancy effective January 31, 2017.

The tenant testified that he rented a room to sleep in and paid \$650.00 for the month of January. The tenant also testified that he continues to occupy this room as of the date of the hearing which is over a year from the end of tenancy. The tenant is claiming the return of rent for portions of December 2016 and January 2017 plus \$650.00 for rent for January 2017 at the new rental unit for a total of \$1,260.74.

The landlord testified that the occupant in the unit above moved in more than eight years ago. Prior to September 2016 when this tenant moved in, the prior occupant of the dispute rental unit lived there for nine years and did not complain about noise disturbances from above. In addition after this tenancy ended in January 2017, a new tenant moved into the dispute rental unit and is currently still in occupation of the unit. The landlord testified that this new tenant has not complained about noise disturbances.

### **Analysis**

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord’s actions that rendered the premises unfit for occupancy. Section 6 of the *Residential Tenancy Policy Guideline*, also states that a landlord would normally not be held responsible for the actions of other tenants unless the landlord was notified of the problem and failed to take reasonable steps to correct it or prevent such conduct by other tenants.

Based on the sworn testimony of both parties and the documentary evidence in front of me, I find that the landlord took immediate action after he received the tenant's complaints and accordingly I find that the landlord acted responsibly and responded to the tenant's complaints in a timely manner

I have reviewed the submissions and testimony of both parties and I find that the tenant's testimony consisted of noise disturbances associated with normal every day activities. Tenants renting a unit in an older housing complex such as this are required to accept the fact that that they will hear noises from the adjoining units.

I also note that the prior tenants and the current tenant of the dispute rental unit did not complain about noise disturbance from the unit above which has been occupied by the same occupant for the past eight years. In addition this building is close to 50 years old and pursuant to s.32 of *Residential Tenancy Act*, a landlord must maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, make it suitable for occupation by a tenant.

Based on the evidence and testimony of the parties, I find that the landlord did not breach the tenant's right to quiet enjoyment and therefore the tenant is not entitled to compensation. Accordingly the tenant's claim for compensation in the amount of \$1,260.74 is dismissed.

The tenant's application is dismissed 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: March 20, 2018

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Residential Tenancy Branch