



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOLLD REAL ESTATE MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            FFT, MNDCT, OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on May 25, 2018 (the "Application"). The Tenant applied for an order that the Landlord comply with the *Residential Tenancy Act* (the "Act"), *Residential Tenancy Regulation* (the "Regulations") or tenancy agreement. The Tenant also applied for compensation for monetary loss or other money owed and for reimbursement for the filing fee.

This matter originally came before me for a hearing July 17, 2018 but was adjourned. An Interim Decision was issued July 19, 2018. This decision should be read in conjunction with the Interim Decision. During the hearing on July 17, 2018, it was determined that the Tenant's request for the Landlord to comply with the *Act*, *Regulations* or tenancy agreement was no longer an issue.

The Tenant appeared at the hearing. The Property Manager appeared at the hearing for the Landlord. I explained the hearing process to the parties who did not have questions when asked. Both parties provided affirmed testimony.

Neither party had submitted further evidence after the July 17, 2018 hearing. The Property Manager confirmed he received a copy of the Application and all of the Tenant's evidence. The Tenant confirmed he had received the Landlord's evidence.

Both parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all evidence submitted and oral testimony of the parties. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to reimbursement for the filing fee?

### Background and Evidence

A written tenancy agreement had been submitted as evidence and both parties agreed it is accurate. It was between the Landlord and Tenant regarding the rental unit. The tenancy started February 15, 2017 and was for a fixed term ending February 28, 2018. Both parties agreed the tenancy then became a month-to-month tenancy. Rent was \$1,750.00 per month. Both parties agreed rent was increased to \$1,820.00 per month in March of 2018.

Both parties agreed the Tenant vacated the rental unit at the end of June 2018.

The Tenant requested \$5,025.00 in compensation for loss of quiet enjoyment due to noise from a hot tub in the building. The \$5,025.00 is based on half of the monthly rent for the five months the hot tub was operating and an additional \$650.00 for moving fees.

The Tenant testified as follows in relation to the loss of quiet enjoyment. He submitted videos which show the noise in his unit from the hot tub jets. He submitted documentation showing an ongoing attempt to resolve the issue. He was unable to read or sleep because of the noise. He could not enjoy his rental unit because of the noise. He had to have music playing all the time to drown out the noise. He experienced a serious loss of quiet enjoyment. He could only be in his unit half of the day because of the noise and therefore is seeking compensation equivalent to half of the monthly rent for the months the hot tub was operating. He did not hear the noise when he first moved to the rental unit because there was construction going on near the building.

The Tenant said he is requesting half the monthly rent for October of 2017 and March to June of 2018, the months the hot tub was operating. He said the hot tub was only on for the last couple weeks in March of 2018. He testified that the hot tub was open from 10:00 am to 10:00 pm seven days per week during these months. He said the hot tub was sometimes on earlier than 10:00 am if it was being cleaned as the jets would be turned on to swirl the chemicals around. He said it was on once in November and once in December of 2017.

The Tenant further testified as follows. He tried to resolve the issue over a seven-month period. He sent several emails to the Landlord and strata about the noise. He asked the Landlord to contact the strata about the noise. Nothing was done further to his emails. A representative for the Landlord attended the building but did not stay because the concierge would not turn the hot tub on. Nobody came back to the building until four months later. The Tenant submitted that he could not have done anything further to minimize his loss.

The Tenant further testified as follows. It took the Landlord five months to attend the rental unit and listen to the noise. He had to prove there was a noise before the Landlord would come investigate the issue. The Landlord was negligent and did not do enough to address the issue. He was forced to move when he was told the issue would not be pursued further because the noise was under the allowable decibel level.

The Tenant said he is requesting \$350.00 for the cost of movers, \$250.00 for the move-out fees for the rental unit building and \$250.00 for the move-in fees for his new building. The Tenant said he was not told about the noise from the hot tub before he moved into the rental unit and that he would not have moved in if he had been aware of the noise.

The Property Manager testified as follows. The rental unit is a condo that is part of a strata. The Landlord does not have much control over the common areas or amenities in the building. The Landlord took the matter seriously. When the Landlord was notified about the issue, they reached out to the strata. The position of the strata remained the same from November 2017 to March 2018. The hot tub was off during this time. The Landlord sent the strata a number of emails where the Landlord expressed frustration about the situation and demanded that the strata address it. The strata did not want to investigate while the hot tub was off. The strata did contact the developer and someone attended to look at the issue. It was determined that the decibel level reading was within the normal acceptable range and no deficiencies were found. The position of the strata and developer was that no further action would be taken. The Landlord did what they could to address the situation.

The Property Manager further testified as follows. A representative for the Landlord said she had not heard anything out of the ordinary in relation to the noise from the hot tub. The noise is the equivalent of white noise. The rental unit is downtown on a busy street and it is reasonable to expect it will not be quiet. The rental unit is on the same level as the hot tub and this was obvious from the viewing. The current tenant has not made any complaints about noise in the rental unit. The Tenant should have moved out of the rental unit if there was an issue. The requested amount is unreasonable.

### Analysis

Section 7(1) of the *Act* states that a party that does not comply with the *Act*, *Regulations* or a tenancy agreement must compensate the other party for damage or loss that results.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Pursuant to section 28 of the *Act*, the Tenant was entitled to quiet enjoyment of the rental unit including “freedom from unreasonable disturbance” (emphasis added).

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

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 (emphasis added) 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.

...

Pursuant to rule 6.6 of the Rules of Procedure, the Tenant as Applicant has the onus to prove he is entitled to compensation as claimed. The standard of proof is on a balance of probabilities meaning it is more likely than not that the facts occurred as claimed.

I have reviewed the videos submitted by the Tenant in relation to the noise in the rental unit due to the hot tub jets. I am not satisfied based on the videos that the noise amounted to an unreasonable disturbance or substantial interference. The noise is a noise one would expect to hear in a building. This is particularly so when the rental unit is close to the pool equipment room. I am not satisfied the sound was particularly loud or out of the ordinary. I note the Tenant testified he could not hear the sound when construction was occurring outside and near the building.

I also note the letter from the building developer submitted as evidence. This letter states that a representative of the developer, project pool engineer, architect representative, construction manager and Tenant attended for a review of the situation on May 1, 2018. It states that a decibel level reading was conducted and it was determined that the readings were within normal acceptable range. It was also determined that there were no issues with the jet pump.

I am not satisfied based on the evidence submitted that the Tenant has established that the hot tub noise breached his right to quiet enjoyment and therefore I dismiss the Application without leave to re-apply.

### Conclusion

The Application is dismissed without leave to re-apply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 18, 2018

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Residential Tenancy Branch