



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

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

## **DECISION**

Dispute Codes      MNDCT, FF

### **Introduction**

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant filed his Application for Dispute Resolution on July 5, 2018 but the landlord said they never received it although the tenant said it was sent by registered mail. The landlord said they received a big envelope of digital evidence but never a copy of the Application so they did not know the details of the dispute and did not know how to respond. They said they had to telephone the Residential Tenancy Branch twice to find out the time of the hearing. They had had another hearing with this tenant and were confused. I find the Application/Notice of Hearing was not served on the landlord by the tenant as required by section 89 of the Act. The tenant applies pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation of two years of rent refund (\$16,100) for the significant disturbance of his peaceful enjoyment for the past two years contrary to section 28; and
- to recover the filing fee for its application from the landlord, pursuant to section 72.

### **Issue to be Decided**

Is the tenants entitled to compensation as claimed and to recover the filing fee for this application from the landlord?

## **Background, Evidence**

The tenant submitted a large number of digital files which he lists as having very loud buzzing sounds, yelling and him announcing who the speakers are. The first set of files are listed as being recorded from June 5, 2018 to June 29, 2018. The second set are listed as being recorded from June 17, 2018 to July 2018 and the third set from May 17, 2018 to May 22, 2018. He stated that the noises came from the apartment above. The landlord said they have investigated but the noises recorded are the tenant's noises; they get many complaints about this tenant, about his banging, loud noises, music, swearing and verbal abuse of the caretaker. She said she had no idea what the buzzing noise was on the digital recording. It may have been the tenant's overhead fan or other machine or him shuffling around. She was unable to provide evidence online to dispute as she never got a copy of his Application and Hearing Notice with the codes.

## **Analysis:**

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Sections 7 and 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In a previous hearing, the tenant's lawyer had apparently filed the evidence. The arbitrator found:

*I find that the Tenant has failed to describe and label his evidence in accordance with the rules of procedure. The Landlord testified that she never received the digital*

*evidence from the Tenant. She testified that she received some correspondence and audio files from the Tenant's lawyer about a year ago, but has not received any evidence since then, and was not served any digital evidence from the Tenant since he applied for dispute resolution on April 16, 2018.*

*There is insufficient evidence before me to find that the Tenant served the Landlord with the 349 digital audio files after he applied for dispute resolution. Even if the Landlord had been served, the digital evidence is not identified correctly and I find it is unreasonable to expect the Landlord to listen to approximately 46 hours of recordings when there is no explanation or time stamp provided on each file.*

*Due to my concerns with the service of the Tenant's evidence to the respondent, and my concern with the lack of description and labelling of the evidence, I find that the Tenant has failed to provide the full particulars of the dispute.*

*Pursuant to section 59 of the Act, I dismiss the Tenant's application with leave to reapply.*

I find the tenant was given leave to reapply and section 28 of the Act requires the landlord to protect the peaceful enjoyment of the tenant. However, I find the weight of the evidence is that he failed to serve the landlord with this Application for Dispute Resolution with the details of the dispute. Residential Policy Guideline 12 notes the purpose of serving documents is to notify the person being served of matters relating to the arbitration. According to the Principles of Natural Justice, a person must be notified of the case against them and given the opportunity to respond.

Furthermore, although the tenant in his evidence identified the recordings and what he alleges was recorded, I did not hear what he alleged although I listened for considerable time. I heard an unidentified buzzing and ticking noise on some but no shouting or yelling as alleged.

I find the landlord's sworn testimony credible that they had investigated and found any noise was emanating from the tenant's own unit. I find insufficient evidence to support the tenant's allegation that the landlord is failing to protect his peaceful enjoyment.

For the above reasons, I dismiss the tenant's application without leave to reapply.

Conclusion:

The tenants' application is dismissed in its entirety without leave to reapply. I find him not entitled to recover the filing fee due to lack of success.

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: October 11, 2018

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Residential Tenancy Branch