



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for a monetary award for damages or loss due to the landlord's violation of the Act, regulations or tenancy agreement pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance service of documents was confirmed. The landlord confirmed receipt of the tenant's application and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to a monetary award as claimed?

### Background and Evidence

This tenancy began in September 2017. The monthly rent is \$1,000.00 payable on the first of each month. The rental building is a strata corporation. The named landlord manages the rental suite on behalf of the owner of the rental unit. The landlord has no interest in any of the other units in the building.

The tenant testified that from October 2017 to May 2018 the neighbor in the suite directly above engaged in activity that caused noise that disrupted her quality of life.

The tenant made multiple complaints to the landlord about the noise from the neighbor. The tenant submitted into evidence copies of the correspondence with the landlord. The tenant feels that the landlord failed to take action in a timely manner. The parties gave evidence that the neighbor vacated the upstairs suite in May 2018. The tenant seeks a monetary award in the amount of \$8,000.00, the equivalent of the full rent for the 8 month period the tenant claims the disruption occurred.

The tenant testified that they are now having conflicts with the new occupants of the upstairs suite. The tenant claimed that the occupants have damaged her vehicle and that they are now causing unreasonable noise on occasion.

The landlord testified that upon receipt of the noise complaints they took appropriate action by notifying the strata corporation. The landlord said that they believe that the strata then issued warnings and fines to the upstairs neighbor in accordance with the strata bylaws. The landlord explained that while they manage the rental unit they have no authority regarding the upstairs suite or the strata corporation for the building.

The landlord testified that they have responded to each of the tenant's complaints in a reasonable and appropriate manner but the volume and frequency of the tenant's correspondence is overwhelming.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. 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 prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. The claimant also has a duty to take reasonable steps to mitigate their loss.

The *Act* sets out at section 28 that a tenant has the right to quiet enjoyment of their rental unit as follows:

**28** *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 [landlord's right to enter rental unit restricted];*

*(d) use of common areas for reasonable and lawful purposes, free from significant interference.*

While I accept the evidence of the tenant that they experienced some discomfort from the noise caused by the upstairs neighbor, I find that the landlord took appropriate steps to resolve the issue. The landlord described an appropriate process for dealing with the complaints made by the tenant. I accept the evidence of the parties that as a result of the complaints and the action of the landlord the tenancy for the upstairs neighbor ultimately ended in May 2018. I find that the landlord took appropriate action to address the tenant's concerns. I find insufficient evidence to demonstrate that the actions taken by the landlord was inappropriate or unreasonable under the circumstances.

I find that the volume of correspondence issued by the tenant to the landlord is not evidence of the landlord's failure to act reasonably. I find that the volume and frequency of complaints made by the tenant to be unreasonable and should the tenant continue to issue complaints to the landlord, it may give rise to a basis for the landlord to end the tenancy for unreasonable disturbance.

Furthermore, the documentary evidence submitted by the parties show that the tenant was actively engaging the upstairs neighbor and causing noise directed at them. Based on the evidence I find that the tenant was engaging in a hostile relationship with the upstairs neighbor. I find that the tenant's own actions exasperated the situation.

I find that the tenant has not met their evidentiary burden to show on a balance of probabilities that the landlord has not acted appropriately and that losses were incurred as a result. Accordingly, I dismiss the tenant's application.

Conclusion

The tenant's application is dismissed without leave to reapply.

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 25, 2019

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Residential Tenancy Branch