



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFT, MNDCT, ERP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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 parties confirmed that they exchanged their documentary evidence.

### Issue(s) to be Decided

Are the tenants entitled to an order to compel the landlord to conduct emergency repairs?

Are the tenants entitled to a monetary order for compensation for loss or damage under the *Act*, regulation or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee from the landlord for this application?

### Background and Evidence

MS gave the following testimony on behalf of the tenants. MS testified that the tenants seek \$500.00 per month since October 22, 2018 for the loss of quiet enjoyment for an ongoing maintenance issue. MS testified that they have lived on the top floor of this complex for 14 years. MS testified that the landlord had a maintenance company do

some work on the roof vents in October. MS testified that since they conducted that work there has been unbearable noise above their unit 24/7 since. MS testified that housing around a belt driven fan vent has rusted out and rattles and shakes uncontrollably. MS testified that the property management company has been very good at trying to resolve the issue but it is the landlord/owner who refuses to spend any money on repairing it. MS testified he and his wife have to wear earplugs to get any peace or be able to sleep. MS testified that they seek a monetary order for compensation as well as an order to have the landlord remedy the issue.

The landlord gave the following testimony. The landlord testified that the issue is virtually non-existent and that the tenants are just overly sensitive to sounds. The landlord testified that alternative units were offered to the tenants to accommodate them and to remove them from that area of the building, but were refused. The landlord testified that the belt driven vent fan is over another unit and that the tenant in that unit advised that there isn't a noise issue at all. The landlord testified that they are always maintaining and repairing items as they arise and maintain the building in a good condition. The landlord testified that they have had a professional company service and repair the roof vents in October and feel there isn't an issue to be dealt with.

### Analysis

Both parties provided video evidence. The tenant provided a video of what they allege is the noise that is occurring. The landlord provided a video of the belt driven vent fan from the rooftop. Residential Tenancy Policy Guideline 41 states that:

*Video recordings must be of good quality and give a clear picture of events.  
Video recordings may be edited so long as the editing does not have the effect of making the recorded evidence misleading.*

The tenants' video is of a very poor quality. It is choppy and doesn't align with the amount of noise as claimed and I find it is very limited in its evidentiary weight. In stark contrast, the landlord provided a high quality video showing that the belt driven fan is running smoothly and quietly.

Based on the vastly different version of video evidence, and that the tenants is of a poor quality, I find that the tenants have not provided sufficient evidence for me to make an order to have the landlord conduct an emergency repair or what that repair would be.

In terms of the tenants' monetary claim, Section 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.

As noted earlier, the tenants have not provided sufficient evidence to show what if any repair is required. As they have not been able to illustrate that, they have also not satisfied all four factors required under section 67 of the Act to be successful in their claim. In addition, MS testified that the property management company has been trying to be accommodating and correcting the issue as best they can. I find that the landlord has not acted in contravention of the Act or the tenancy agreement. Based on all of the above and on a balance of probabilities, I dismiss the tenants claim for monetary compensation. The tenants have not been successful in this application.

### Conclusion

The tenants' 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: April 25, 2019

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Residential Tenancy Branch