



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, RP, FF

### Preliminary matter

The Tenants filed an amendment to the application on April 24, 2019 to add a monetary claim of \$4,875.00 to their application. The Landlord said that she received the amendment in early May, 2019. The amendment is accepted into the application.

### Introduction

This matter dealt with an application by the Tenants for compensation for damage or loss under the Act, regulations and tenancy agreement, for repairs to the rental unit and to recover the filing fee.

The Tenants said they served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on March 15, 2019. Based on the evidence of the Tenants, I find that the Landlord was served with the Tenants’ hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Are the Tenants entitled to compensation and if so how much?
2. Are there repairs to be completed to the rental unit?

### Background and Evidence

This tenancy started on March 15, 2018 as a fixed term tenancy until June 2018 and then continued on a month to month basis. Rent was \$1,950.00 per month payable in advance of the 15th day of each month. The Tenant paid a security deposit of \$925.00 on March 1, 2018. No inspection reports were completed for this tenancy.

At the start of the hearing the Tenants said they have moved out of the rental unit so they are withdrawing their request for repairs to the rental unit.

The Tenants continued to say there was a dripping noise in the ceiling of their rental unit that started in November 2018. The Tenants said they messaged the Landlord about the dripping and the problems it was causing for them. The Tenant said the dripping noise was loud enough that it interrupted their sleep and was very inconvenient for them. The Tenants notified the Landlord on November 27, 2018 and the Landlord responded to them on November 27, 2018 that the Landlord had contacted the Strata Property Manager about the dripping noise issue and a contractor was coming out to look at the problem. The Tenant said the contractor came out and investigated the issue on November 29, 2018, but no repairs were completed. The Tenant said they continued to communicate with the Landlord about the noise issue until they decided to move out on March 31, 2019. The Tenants said they moved out because the noise issue made the rental unit uninhabitable for sleeping in. The Tenant continued to say the Landlord offered ear plugs to help with the problem, but they decided to move out. The tenancy ended on March 31, 2019.

The Tenants said that because of the loss of quiet enjoyment, and sleep due to the dripping noise issue they had to move out and now they are requesting compensation of half the rent they paid from November 2018 to March 2019 in the amount of \$4,875.00.

The Tenant also requested to recover the filing fee of \$100.00 if their application is successful.

The Landlord said she contacted the Strata Property Manager as soon as the Tenants told her about the dripping noise issue. The Landlord continued to say as a result of her communications with the Property Manager a contractor C & C came out to the rental unit to investigate the problem. The Landlord said the issue was determined as a plumbing problem in the building. The Landlord said the building is old and the pipes expand and contract which results in some noise issues. The Landlord said this issue is a problem for the Strata. The Landlord continued to say she was unable to do anything to fix the dripping noise as she was told it could involve replacing pipes and possibly the boiler. The Landlord continued to say this is a problem with older buildings in Canada during the winter. As well, the Landlord said she has rented this unit for years and these Tenants are the first to complain about the pipe noise. The Landlord said she is unable to do more than report the issue to the Strata and then follow up with the Strata to see if anything happens. The Landlord said she did what she could and if the Tenants were unhappy in the unit they could have moved earlier.

The Tenants said it is difficult to find rents and that is why they didn't move earlier.

The Landlord said in closing that she did what she could but this issue is out of her control as it is a building issue with the Strata.

The Tenants said in closing that they don't know who is responsible but they had to move because the dripping or pipe noise made the rental unit uninhabitable. The Tenants requested compensation for their loss.

### Analysis

Section 32 of the Act says:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Policy guideline # 16 says:

Under section 7 of both the Residential Tenancy Act and the Manufactured Home Park Tenancy Act:

- a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and
- the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Under section 67 of the Residential Tenancy Act and section 60 of the Manufactured Home Park Tenancy Act, if the director determines that damage or loss has resulted from a party not complying with the Act, the regulations or a tenancy agreement, the director may:

- determine the amount of compensation that is due; and
- order that the responsible party pay compensation to the other party

Further Policy Guideline # 6 says:

## B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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 with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these. 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. In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this situation I accept the Tenants quiet enjoyment of the rental unit was affected by the dripping or pipe noise caused by the plumbing in the building. As well I accept that the Landlord acted responsibly by contacting the Strata Property Manager as soon as she received the complaint from the Tenants. Consequently, I find the Landlord complied with the Act and met her responsibilities as a Landlord. In this case the Landlord did not have the ability to resolve the noise issue, but the Landlord did bring the issue up to the Strata Property Manager. Consequently I find the Tenant's have not established grounds to prove the Landlord did not comply with the Act. I understand the Tenants may have suffered a loss of enjoyment from the pipe noise, but the Landlord did what she could in a timely manner so the Landlord complied with the Act in this situation.

I dismiss the Tenants application without leave to reapply due to lack of evidence to hold the Landlord responsible for the noise in the pipe system of the rental building.

As the Tenants application was not successful I order the Tenants to bear the cost of the filing fee of \$100.00 that they have already paid.

Conclusion

I find that the Tenants have not established grounds to be successful in their application for compensation for loss of quiet enjoyment in the rental unit causing the Tenants to end the tenancy. The Tenants' 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: May 13, 2019

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Residential Tenancy Branch