



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes:** *MNDC, OLC, RR, FF*

### **Introduction**

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the loss of quiet enjoyment, for a rent reduction and for an order directing the landlord to comply with the *Act*. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself and was accompanied by his advocate. The landlord was represented by their agents.

As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

### **Issues to be decided**

Is the tenant entitled to compensation?

### **Background and Evidence**

The tenancy started on February 01, 2011. The monthly rent is \$1,353.00. The rental unit is a one-bedroom apartment (referred to as #8 in this decision) located in an apartment complex that houses a total of 263 units. Adjacent to the dispute rental unit #8 is another one-bedroom unit (referred to as #7 in this decision). A two-bedroom unit (referred to as #5 in this decision) is located directly above #7 and #8. All the units mentioned above are occupied.

The tenant testified that in January 2018 a couple moved into #5 which is the two-bedroom unit located jointly above the tenant's unit #8 and the adjacent unit #7. The tenant testified that the noise disturbances started around that time and that the disturbances consist of vibrations and sounds of items falling on the floor creating loud noises. The tenant described the disturbances as random and occurring at night. The tenant agreed that the sounds were not from loud music, loud conversations or heavy footsteps and did not appear to be created on purpose. The tenant stated that the noises sounded like someone was pulling out a sofa bed.

The tenant started writing complaints to the landlord starting in May 2018. The landlord responded by issuing two warning letters to the occupants of #5. The landlord also had a conversation with them and testified that he found out that the female tenant works full time as a dental hygienist and wakes up at 6:30am to leave home at 7:00am for work shifts of 10 to 12 hours. The male tenant works from home.

The occupants of #5 stated to the landlord, that they do not party or play loud music and usually go to bed between 9:30 to 10:00pm. The female stated that since she became pregnant she used the washroom more frequently at night. She also stated that after having received the warning letters from the landlord, she is extra careful to tread lightly and takes care not to drop items on the floor. She told the landlord that she feels like a prisoner in her own home. She also added that she cannot make her footsteps any quieter.

The tenant provided a video recording of himself taken at night while he slept, on December 17, 2018. The video shows that a loud sound woke the tenant up. The landlord discussed this with the tenant in #5 and she stated that she had heard the noise too that night and on one other night. She informed the landlord that she had no idea where it came from and denied having caused the disturbance.

The tenant stated that he has four other similar recordings but did not file them into evidence, because they were too short. In one of his written complaints, the tenant provided information about the timing of the disturbances and most were around midnight and between 6:30am to 7:30 am.

The tenant filed a doctor's note into evidence which states that the tenant is experiencing considerable stress due to disruption of his ability to sleep at night from noises from the suite above him.

The note goes on to say that the tenant is frustrated by what he perceives to be lack of action/intervention on behalf of the property manager. The tenant is claiming \$25.00 to cover the cost of obtaining this note.

The tenant filed an affidavit from his brother which describes the adverse effects that the noise disturbances are having on the tenant's health. The tenant is claiming \$40.00 for the cost of notarizing his brother's statement.

The landlord stated that he has not received any other noise or disturbance complaints from other occupants of the building including the occupant of the adjacent one-bedroom apartment #7, which lies directly beneath the suite that is allegedly the source of the noise disturbances.

During the hearing, the landlord requested the tenant to provide more information to enable him to determine where the alleged noises were coming from.

The tenant has made the following claim:

1.	Loss of Quiet Enjoyment per month starting April 2018	\$300.00
2.	Aggravated Damages per month starting September 2018	\$500.00
3.	Fee for Doctor's report	\$25.00
4.	Fee for witness affidavit	\$40.00
5.	Filing fee	\$100.00

### **Analysis**

Based on the testimony of both parties, I find that the problems presented by the tenant for which he is requesting compensation allegedly started in May 2018. The landlord received the tenant's complaints and took action to issue two breach letters to the occupants of #5. The landlord also had a conversation with them and stated that based on his findings, he was unable to find the occupants of #5 at fault.

The landlord stated that there were no other noise complaints against the occupants of #5 from other occupants of the building. The landlord stated that the occupant of #7 which is located directly under #5 and is adjacent to #8 has not made any complaint against the occupant of #5. The landlord stated that despite his efforts he is unable to find evidence to support the tenant's allegations of noise disturbances coming from the occupants of #5.

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy. A variation of that is inaction by the landlord which permits or allows physical interference by an outside or external force which is within the landlord's power to control. Frequent and ongoing interference if preventable by the landlord and he stands idly by while others engage in such conduct may form a basis for a claim of a breach of the covenant of quiet enjoyment.

In this case, the tenant testified that the noise disturbances started only after the couple moved into #5 - the apartment above his. The tenant complained to the landlord who took action and issued breach letters to the occupants of #5. The landlord also spoke with the couple who denied creating noise disturbances.

In his testimony the tenant stated that he felt that the noises were not created on purpose but happened randomly at night.

Based on the testimony of both parties, I find that the landlord took steps to resolve the situation and was unable to find sufficient evidence to support the tenant's allegation that the source of the noise disturbances were the activities of the occupants of #5. I find that the tenant did not provide compelling evidence to support his claim of compensation for loss of quiet enjoyment and therefore the tenant's claim for compensation is dismissed.

"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.

Based on the testimony of the tenant, I find that the tenant is claiming aggravated damages for noise disturbances which he alleges are coming from the occupant of #5. The tenant has not provided sufficient evidence to support his allegations other than that the noise disturbances started at the time the occupants of #5 moved in.

The tenant's testimony consisted of noise disturbances associated with normal every day activities. The noise disturbances may inconvenience the tenant but are to be expected when the upper level is occupied.

When living in an apartment building noise disturbances caused by movements on the upper floor are not unexpected. Persons occupying a such a rental unit are required to accept the fact that that they will hear noises from the upstairs. In addition, the tenant testified that he believes that the noise disturbances are not deliberate on the part of the upstairs occupant. The tenant's evidence indicates that noise disturbances occur in the morning at a time that matches the work schedule of the occupant of #5.

Based on the above I find that significant damage or loss was not caused to the tenant and therefore his claim for aggravated damages is dismissed.

The doctor's note corroborates the testimony of the tenant but does not provide information regarding how the tenant's situation is linked to his medical condition. The tenant's claim for \$25 is dismissed

Similarly, the affidavit written by the tenant's brother does not provide any additional information on the tenant's situation, that would prove the tenant's claim for compensation. The tenant's claim for the cost of notarizing his brother's statement is dismissed.

The tenant has not proven his case and must bear the cost of filing his own application.

### **Conclusion**

The tenant's 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: May 10, 2019

---

Residential Tenancy Branch