



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, OLC, FF

### Introduction

This matter dealt with an application by the Tenant for compensation for damage or loss under the Act, regulations and tenancy agreement, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on June 19, 2019. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s 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. Is there damage or loss to the Tenant?
2. Is the Tenant entitled to compensation for damage or loss and if so how much?
3. Has the Landlord complied with the Act, regulations and tenancy agreement?

### Background and Evidence

This tenancy started in August 2016 as a month to month tenancy. The present Landlord purchased the property in June 2018. The tenancy is a verbal month to month tenancy. Rent is \$1,100.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$550.00. The tenancy ended on July 15, 2019 and the Tenant recovered his full security deposit of \$550.00.

The Tenant said they had to move out of the rental unit because the noise from the Landlord’s unit above them was so loud that his family lost their quiet enjoyment of the rental unit. The Tenant said he sent text messages and talked to the Landlord 15 to 20 times about the noise issue from November 2018 to the end of the tenancy. As well the Tenant wrote the Landlord a formal complaint letter dated May 28, 2019. The Tenant continued to say the Landlord did not correct the noise issue and the Tenant believes

the Landlord was making the noise deliberately and constantly to disrupt the Tenant's quiet enjoyment of the rental unit. The Tenant submitted two videos with sound track to illustrate the noise issue.

Further the Tenant said the Landlord stored his business supplies in the common areas of the rental complex. The Tenant said there were wood, wire and metal pieces stored by the walk way to his rental unit and the Tenant believes these items were a hazard to himself and his family. The Tenant said these hazards were another reason he ended the tenancy.

The Tenant said because the Landlord did not correct the noise and outside hazard issues he has made and application for loss of quiet enjoyment of the rental unit which ultimately caused him to move out. The Tenant is requesting compensation of one month's rent in the amount of \$1,100.00. As well the Tenant is requesting to recover his mailing costs of \$11.97 and \$15.59 and the filing fee for the application of \$100.00. The Tenant said his total claim is \$1,227.56.

The Landlord's Agent said that the noise in the Landlord's unit was normal family noise caused by his children. The Agent continued to say the Landlord told his children to be quiet and he tried to keep the noise to a normal and reasonable level. The Landlord agreed the Tenant text messaged and talked with him about the noise level, but the Landlord said he thought it was maybe 7 or 8 times not 15 to 20 times as the Tenant said.

Further the Landlord said he has stored some supplies and materials for his work in the common areas but the materials have not blocked the Tenant's entry way. The Landlord's Agent said the Landlord has the right to store his things on his property and the common areas are not part of the tenancy.

The Video records were listened to and the Tenant said the banging noise was the Landlord's family upstairs and it was deliberate and continuous. The Landlord and the Agent said they could not hear any banging or noise from the upper unit in the house.

The Landlord said in closing that nothing was done deliberately and it was just the Landlord's kids making the noise. The Landlord said he told his children to be quiet and he thought they were.

The Tenant said in closing that he had to move out of the rental unit because of the noise and the debris around the entrance of his rental unit. The Tenant said he has rented a new unit in the same area and it is a higher rent, but to have peace and quiet is worth it.

## Analysis

### A. LEGISLATIVE FRAMEWORK

Under section 28 of the Residential Tenancy Act (RTA) and section 22 of the Manufactured Home Park Tenancy Act (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

### 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.**

#### Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which RESIDENTIAL TENANCY POLICY GUIDELINE 6 Entitlement to Quiet Enjoyment the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed. A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

In this situation the Landlord was made aware of the noise issue a minimum of 7 to 8 times from complaints from the Tenant. The Tenant testified that he spoke with or text messaged the Landlord 15 to 20 times from November 2018 to the end of the tenancy. The Tenant said the Landlord did not take corrective action to stop the noise even though the Landlord was aware that the noise in his unit was creating a problem for the Tenant in the lower rental unit. The Landlord said the action he took was to tell his children to be quiet.

Although the Video evidence is not completely conclusive that the noise issues affected the Tenant's quiet enjoyment, the Landlord had a minimum of 7 to 8 complaints or warnings from the Tenant including a formal written letter dated May 28, 2019. On the balance of probabilities, I accept the Tenant's testimony and evidence that noise from the Landlord's living unit had a negative impact on the Tenant's quiet enjoyment, which contributed to him ending the tenancy. Consequently I find the Tenant has established grounds for compensation in the amount of \$1,100.00. The Landlord was aware of the noise issue over a number of months and the Landlord did not take action that corrected the noise issue, which resulted in the Tenant moving out.

Further the Tenant's claims to recover the cost of postage for the hearing is not an eligible claim as it is a cost of the hearing not the tenancy. I dismiss the Tenant's claims for postage.

As the Tenant was successful in this matter I order the Tenant to recover the filing fee of \$100.00 from the Landlord. I grant the Tenant a monetary order for \$1,200.00 representing compensation of \$1,100.00 and the filing fee of \$100.00.

### Conclusion

I find in favour of the Tenant's monetary claim. Pursuant to sections 67 of the Act, I grant a Monetary Order for \$1,200.00 to the Tenant. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that court.

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: July 30, 2019

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Residential Tenancy Branch