



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDC, FF

### Introduction

The tenants apply for a monetary award for an alleged loss of amenity or quiet enjoyment of their rental unit and well as for reimbursement for expenses said to have been incurred as a result.

In a previous application (file and cross file numbers shown on cover page) the tenants, applying to recover their security deposit, amended their claim to include this claim. The arbitrator in that matter, after a hearing February 1 and March 21, 2019, found that the landlords had breached the covenant for quiet enjoyment by failing to provide a working heating system and have it repaired or replaced in a timely manner. However, the arbitrator declined to adjudicate on the tenants' monetary claim other than for return of the security deposit, as the claim had not been clearly particularized, for example: in a Monetary Order Worksheet. Leave was granted for the tenants to re-apply and this is that application.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Have the landlords breached their obligation under the tenancy agreement to provide heat or their obligation to provide reasonable privacy and freedom from unreasonable disturbance under the "quiet enjoyment" provisions (s. 28) of the *Residential Tenancy Act*? If so, what is appropriate compensation?

### Background and Evidence

The rental unit is the lower portion of a house. The upper portion was at all times occupied by the landlords, who appear to have been living elsewhere but conducting significant renovation work in the upper portion throughout this tenancy. That work occurred on weeknights and weekends according to the previous arbitration decision.

There is a written tenancy agreement. The tenancy started November 1, 2018 at a monthly rent of \$1690.00. The tenants' security deposit of \$845.00 was dealt with in the prior proceeding.

The tenants left at the end of December 2018. They gave less than the lawfully required notice to do so. That was also dealt with in the prior proceeding.

Ms. D. outlined the tenants' claims in a "to whom it may concern" letter and swore to the truth of it at the hearing.

The house is heated by a hot water system involving a boiler that did not work well. The boiler was turned off for the summer months but when it was restarted in September, she reports that it worked intermittently and emitted loud banging noises. The tenants purchased two space heaters to heat the rental unit in place of turning on the boiler heat. They seek the \$120.00 cost for the heaters.

The landlords say the boiler worked and produced heat at all times but for when the tenants shut off. In the spring the heating pumps were making noise and were fixed in June. In the fall the boiler was making noise, a different problem.

The tenants traded communications with the landlord about getting the boiler fixed or replaced. It is the tenants' view that many plumbers in the area could do the job of repair or replacement but the landlord kept procrastinating. Ultimately the landlord's workmen replaced the boiler in mid-December.

The landlords say that the tenants didn't complain about the noisy boiler under October 22. They say that only mechanical companies were the qualified to work on this heating system, not simple plumbers. It was difficult to get mechanical contractors to come out to this town some distance from Vancouver. Mr. S. says he waived about \$234.00 in natural gas charges to compensate the tenants for the boiler trouble.

The tenants complain about trouble with the fridge. It failed and was replaced twice. Though the landlord compensated them during the tenancy they feel it wasn't adequate.

The landlords say that the tenants reported fridge problems twice and in each case the fridge was replaced the next day. Further, the tenants were compensated \$90.00 of July rent for lost food.

They also complain that the landlord Mr. S. made "unannounced visits" to their rental unit. Though he didn't always enter, he knocked on their door "without our anticipation" and on a few occasions interrupted work and meals. One tenant worked at home and considered the visits a breach of privacy.

The landlord Mr. S. says he has never entered the rental unit without permission.

During the tenancy the landlords carried out "a lot" of construction in the suite above. They had been told the work would be finished by August when they moved it, but it continued until late December. The work was sometimes in the evening and sometimes on weekends.

Mr. S. says he never worked outside the municipal bylaw hours but for once, on August 22, and got a complaint message from the tenants the same evening.

The tenants also complain about a lack of insulation in the rental unit, saying they had to purchase a door sweep for the front door and install it themselves though the landlords paid them back for it. They also bought "insulation tape" for windows.

The landlord Mr. S. says the tenant Mr. B. contacted him about it and said he would take care of it himself. Mr. S. compensated him by reducing the December rent.

After mid-December when they'd given their notice to end the tenancy, they say the landlord Ms. S. harassed them by demanding to know what day they were leaving and later accused them of smoking in the apartment. In their view the landlords email regarding an outstanding Hydro bill was also harassment.

They say that all this negative interaction with the landlords caused Ms. D. stress, anxiety and insomnia for which she was medicated by a physician. They seek the cost of the medication as well as printing and postal costs related to the dispute.

The landlords say that on the second last day of the tenancy; December 30, the tenants complained about: spiders, the bathroom fan and the kitchen fan.

The tenants seek loss of income resulting from attendance at the dispute hearings.

### Analysis

#### Anxiety Medication

The medical note and prescription referred to in the tenants' statement were not included in the evidence and so I dismiss this item. Even if they had been it would be difficult to discern that an anxiety disorder or incident was due to one particular relationship; this landlord and tenant relationship.

#### Canada Post and Printing Costs

I must dismiss this item of the claim. An arbitrator's power to make an award in the nature of costs and disbursements incurred in this dispute resolution process is limited to awarding recovery of the filing fee.

#### Loss of Income

As with the courts, participants in the dispute resolution process, even when successful, are not awarded compensation for loss of income to attend.

#### Space Heaters

The evidence satisfies me that the problems with noise from the heating system in this house caused the tenants to avoid the use of it. Their purchase of space heaters was not inappropriate. Since it would appear they took the heaters with them it would not be appropriate to make the landlords pay the full cost of them. I award the tenants \$60.00, being half the cost of the heaters.

#### Loss of Quiet Enjoyment

The tenants say the boiler problem persisted for the duration of their eight month tenancy. This would appear to be exaggeration. The boiler was off during the summer

months and made no noise. The tenants could turn the boiler off and the noise would stop. This they did.

In this modern period, noise complaints of this nature are usually supported by objective evidence in the nature of sound recordings or videos. While such evidence is not mandated or required, its absence in a case such as this, where the ending of the tenancy was said to be caused by the noise, is absence is worthy of note.

There is little evidence to suggest the space heaters used by the tenants during colder periods did not perform as adequate alternatives for the boiler or were more inconvenient to use than the boiler heat system (though quieter).

In result I dismiss the tenants' claim for money for loss of quiet enjoyment because of boiler noise or boiler failure.

#### Trouble with the Fridge

The evidence of the tenants is that the fridge problem lasted ten days and the evidence of the landlords is that new fridges arrived the next day. I am unable to determine which if either of these positions is true or more likely. I find the tenants have not proved on a balance of probabilities that they suffered any significant inconvenience (other than the loss of food already compensated for) due to a fridge failure.

It should be noted that fridges fail and landlords are not guarantors that any appliance will work in perpetuity. It is a landlord's failure to attend to repair within a reasonable time that exposes the landlord to a claim for damages. That has not been shown to be the case here. I dismiss this item of the claim.

#### Unannounced Visits

The evidence does not show that the landlords or either of them ever entered the rental unit without invitation or proper notice. Simply knocking on the door is not against the law or the tenancy agreement. I dismiss this item of the claim.

#### Construction Noise

As with the boiler noise, the competing evidence presented here, lacking any objective corroboration, does not prove on a balance of probabilities that the landlords bothered

the tenants with renovation noise in the evenings or on the weekends other than on one night in October, which I consider inconsequential. I make this determination on the evidence presented for this hearing without consideration of the general, unparticularized statement made in the earlier dispute resolution decision. I dismiss this item of the claim.

#### Insulation

There is no basis to prefer the tenants' evidence that the landlord was to buy and install a door strip over that of the the landlord's evidence that the tenants would do it. The evidence of mould and "leakage" in the window tracks is unconvincing. It has all the indicia of being condensation accumulated on the inside of the window itself and collected in the tracks, mixed with dirt or dust or debris, requiring cleaning. I am unable to conclude there was any failure in the window system that required the landlords' attention or that would justify a monetary award. I dismiss this item of the claim.

#### Harassment

I have reviewed the tenants' evidence and their written narrative. I find nothing that would be considered conduct inconsistent with parties involved in a dispute or that would warrant the sanction of a monetary award. I dismiss this item of the claim.

#### Conclusion

The tenants are entitled to a monetary award totalling \$60.00. In light of this result, I decline to award recovery of the filing fee.

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: September 29, 2019

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Residential Tenancy Branch