



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding THE PINE APTS. LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application, pursuant to section 72.

The "female tenant" did not attend this hearing, which lasted approximately 62 minutes. The male tenant ("tenant") and the landlord's agent ("landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord called one witness, "witness PC," who was excluded from the outset. Both parties had equal opportunities to question the witness. The landlord's other two witnesses were determined to be irrelevant, and did not testify, since the landlord said they would testify about their own personal experience with noise in a different unit of the rental building.

The tenant confirmed that he had permission to represent the female tenant at this hearing (collectively "tenants"). The landlord confirmed that she was the building manager for the landlord company named in this application and that she had permission to speak on its behalf at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application and both tenants were duly served with the landlord's evidence package. Both parties confirmed that they were ready to proceed with this hearing and they had no objections to each other's evidence.

### Issues to be Decided

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

Are the tenants entitled to recover the filing fee for this application?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy ended on July 30, 2019. Monthly rent in the amount of \$950.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenants and the landlord returned the full deposit to the tenants. A written tenancy agreement was signed by both parties.

The landlord claimed that the tenancy began on April 16, 2018, while the tenant claimed that it was April 13, 2018.

The tenants seek a monetary order of \$3,922.00, plus the \$100.00 application filing fee. The tenant said that he was seeking \$3,000.00, which is a 20% rent reduction for 15 months of having to live with noise, \$390.00 for paying double the rent for the rental unit and a new unit that the tenants moved to, \$503.23 for three nights in a motel, and \$29.66 for earmuffs.

The tenant testified regarding the following facts. The tenants knew immediately when they moved in, that there was a problem with noise in the unit directly above them from the "occupants." The tenant had a heart failure diagnosis and was on the wait list for heart surgery. The landlord asked the tenants by text message on April 21, 2018, whether there were any problems with the occupants living above them and the tenants responded that they were aware of the noise problem. Nothing was done by the tenants because the tenant was in the hospital at the time. From May to July 2018, the noise from the occupants was bad, as it was banging on the floor for five to seven days per week, even at 3:00 a.m. and 4:00 a.m. On August 26, 2018, the tenants texted the landlord and she informed them that the occupants would be evicted on September 30, 2018. The landlord told the tenants that other landlord managers previously tried to

evict the occupants but did not have any luck. Two other tenants moved out because of the noise but were too afraid to formally complain. There was a previous RTB hearing on October 23, 2018 that got appealed, so the occupants did not move out. There were complaints about smoking marijuana and noise regarding the occupants. The tenants dealt with 15 months of “noise, racket and ongoing harassment.” On November 16, 2018, the tenants told the landlord about ongoing noise, so the landlord said she would issue a caution notice and pursue a “short eviction” of the occupants.

The tenant testified regarding the following facts. From December 2018 to February 2019, the tenant was in the hospital and underwent heart surgery, so the tenants did not reside at the rental unit. When the tenants returned to the rental unit in February 2019, the noise started again. The occupants above did not like people living below them. On April 2, 2019, the tenants complained to the landlord and on June 4, 2019, another RTB hearing was held, where the parties settled and agreed that the occupants would move out by June 30, 2019, which they did. The noise was really bad from the occupants during the entire month of June 2019. The landlord told the tenants that they would get reimbursed for the noise issues. On May 20, 2019, the tenants stayed in a motel for the May long weekend for three nights. The tenants bought headphones because of the noise. On July 2, 2019, the landlord’s maintenance person, witness PC, began renovations inside the occupants’ unit, which involved “ripping up the carpet and vinyl.” From July 4 to 5, 2019, the tenants did not stay in the rental unit. Witness PC moved into the unit above and made noise while going to bed and “having beers” with his friends. On July 13, 2019, the tenants found a new place to live and sent a text message notice to the landlord to vacate by August 31, 2019. The tenants did not pay rent to the landlord for August 2019 because the landlord found new tenants by August 1, 2019. The tenant’s main priority was his heart issue, not the noise. The tenants kept track of all the noise throughout their tenancy.

The landlord testified regarding the following facts. The landlord disputes the tenants’ entire application. The landlord followed the RTB guidelines. No one else made any complaints about the noise. There was a five-month gap of no complaints from the tenants and they failed to move out, despite claiming the noise was so bad. The landlord called the noise bylaw officers and they contradicted the tenants’ complaints. The landlord called the police to report the tenants’ complaints about noise. It took time for the landlord to evict the occupants. Witness PC did renovations in the unit above the tenants’ rental unit on July 10, 2019. The tenants moved out with no notice to the landlord and then provided their letter to vacate after they moved out.

Witness PC testified regarding the following facts, in response to both parties' questions. He performed renovations in the unit above the tenants' rental unit, after the occupants moved out. The renovations were done on July 10, 11, 12 and 15 of the year 2019. The renovations included removing the carpet underlay, painting, and mudding. He kept track of his work duties and hours on his worksheet. He does not provide estimates to the landlord as part of his job, despite the tenant's allegations that he estimated \$8,000.00 to \$10,000.00 worth of renovations in the unit above the tenants' rental unit. He only performed renovations in accordance with what his employer asked him to do.

### Analysis

Section 28 of the Act deals with the right to quiet enjoyment (my emphasis added):

28     *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy;*
- (b) freedom from **unreasonable disturbance**;*
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.*

Residential Tenancy Policy Guideline 6 "Entitlement to Quiet Enjoyment" states the following, in part (my emphasis added):

*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.*

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicants to establish the claim. To prove a loss, the tenants must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenants followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for compensation of \$3,922.00, without leave to reapply.

While the tenants found the occupants to be loud and noisy, these complaints were not necessarily subject to intervention by the landlord. Residing in a multi-unit rental building sometimes leads to disputes between tenants. A certain level of noise is to be expected in a multi-unit apartment building, given the location of the tenants' unit directly below the occupants' unit. The occupants living above the tenants were entitled to quiet enjoyment of their unit, including completing activities of daily living and using the unit for different purposes. The tenants cannot decide how or when the occupants' unit is to be used and for what purposes. The rights of both parties must be balanced.

When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required.

I find that the landlord described an appropriate process that was initiated to address the tenants' complaints regarding the occupants. The landlord notified the police and the City bylaw officers of the noise complaints, on behalf of the tenants, rather than the tenants taking those actions. The landlord pursued two RTB hearings in order to evict the occupants, both of which resulted in settlements. The tenants provided copies of both previous RTB decisions. The file numbers for those hearings are contained on the

front page of this decision. The first settlement on October 23, 2018, was for the occupants “not to create noise disturbances” and the second settlement on June 4, 2019, was for the occupants to vacate their unit by June 30, 2019. I see insufficient evidence to demonstrate that the landlord failed to take appropriate action to follow up on the tenants’ noise complaints about the occupants living above them.

I find that the tenants did not provide sufficient evidence to substantiate their monetary claim for \$3,922.00 and failed to satisfy the above four-part test. The tenant did not go through his invoices or receipts during the hearing, for the motel or the earmuffs. The tenant did not indicate how he determined that 20% was a “reasonable” number for the “15 months of noise.” The tenant spoke for most of the hearing time, as compared to the landlord, but repeatedly referenced his text messages, rather than his other documents. I repeatedly notified the tenant that he should go through his documents and point me to evidence that he wanted me to consider; however, he failed to do so.

I find that the noise referenced by the tenants was a temporary inconvenience and not an unreasonable disturbance, as noted in Policy Guideline 6, above. The tenants did not provide or reference or indicate that the occupants living above them violated any noise bylaws. The tenants did not indicate that they contacted the police or City bylaw officers to file noise complaints. The landlord said that she contacted the police and the City bylaw officers on behalf of the tenants, and the bylaw officers contradicted the tenants’ complaints. I find that the tenants did not properly notify the landlord on a consistent basis to complain of noise violations, admittedly waiting months in between complaints, since the tenant said that he had more important health issues to deal with.

As the tenants were unsuccessful in this application, I find that they are not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenants’ entire 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: February 03, 2020