



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PORTE REALTY LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, MNDC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), for an order to reduce rent for repairs, to have repairs made to the unit and to recover the cost of the filing fee.

The tenant attended the hearing. As the landlord did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The tenant testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 8, 2019. A Canada post tracking number was provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the landlord has been duly served in accordance with the Act.

The tenant appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing the tenant stated that they no longer require an order for repairs.

Issues to be Decided

Is the tenant entitled to a reduce rent for repairs?

Is the tenant entitled to other money owed or loss?

Background and Evidence

The tenancy began on November 1, 2002. Current rent in the amount of \$956.00 was payable on the first of each month. The tenant paid a security deposit of \$365.00.

The tenant claims as follows:

a.	Loss of use of rooms	\$ 5,138.81
b.	Chiropractor	\$ 253.00
c.	Counsellor	\$ 147.00
d.	Aggravated damages	\$12,720.00
e.	Mail cost	\$ 36.31
f.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$18,395.00</b>

The tenant testified that they are claiming from March 14, 2019 to June 7, 2019, 80 days for loss of use of the bedroom. The tenant stated that they could not use the bedroom because they could hear the sound of water flowing through the pipes, which they could not sleep. The tenant stated that they should be entitled to recover the loss of use of the bedroom in the amount of \$471.45

The tenant testified that they are claiming from June 8, 2019 to December 4, 2019, 198 days for loss of use of the living space. The tenant testified that they could not use 75% of the living space as there was banging of pipes over the dining area, which turned out to be air in the pipes. The tenant stated that there was also a buzzing and high pitch sound, which turned out to be from the upper renter's refrigerator. The tenant stated that they should be entitled to recover the loss of use of living space in the amount of \$4,667.36.

The tenant testified that because they could not use their bedroom for a period of time due to the noise, they had to sleep on the floor in the living area and this caused discomfort in their back and ear. The tenant seeks to recover the cost of the chiropractor in the amount of \$253.00. Filed in evidence are receipts.

The tenant testified that because of the issues with the noise they sought help from a counsellor. The tenant seeks to recover the cost of the counsellor in the amount of \$147.00.

The tenant testified that they have not had a normal life for nine months and has suffered mental stress, anguish, fear, exhaustion, stress, humiliation, disrespect, loss of trust, depression, discouragement, frustration and anger, due to the noise continuing for nine months.

The tenant testified that they recorded noise 1272 times from March to December 2019 and had to navigate the noise. The tenant stated that because the landlord did not comply with the August 23, 2019 decision that this indicates the landlords were willfully neglect full. The tenant seeks aggravated damages in the amount of \$12,720.00. Filed in evidence are two pages marked page1 and 61, of noises heard. Pages 2 to 60 were not submitted as evidence.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the tenant has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

## **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.

I accept the parties entered into a settlement agreement on August 23, 2019 and the landlord was going to have a professional attend the rental unit to source out the noise the tenant was hearing. While the landlord did not have a professional attend, I do not find that alone is a breach of the Act, as no order of compliance was made. Further, no actual repairs were required to be made within the rental unit.

In this case, the tenant was hearing different noises, such as water running in pipes, banging or a vibration of pipes and a high pitch frequency sound. These were in different areas of the bulk head or ceiling of the rental unit and were at different dates and times.

I find the sound of water running, vibration or banging of pipes, is not a breach of the Act, as the age and character of the premise must be considered. It is not uncommon that pipes that run through walls or ceiling will make noise from time to time and that noise may increase with the aging process of the infrastructure. The tenant presented no supporting evidence to support the noise was unreasonable, such as audio recording or that the rental unit does not comply with health and safety standards, such as a letter from a qualified person who actually inspected the unit.

Furthermore, I find it would be impossible for the landlord to know what the source of a high pitch frequency sound the tenant was hearing, as everyone's hearing is different. I find it is unreasonable to expect the landlord to investigate a sound that most likely was not heard by anyone else. Also, the sound was determined to be from a refrigerator in another rental unit, this is normal house hold noise and not a violation of the Act.

Based on the above, I am not satisfied that the tenant has provided sufficient evidence to prove the landlord has violated section 32 of the Act. I find the tenant is not entitled to monetary compensation. Therefore, I dismiss the tenant's claim without leave to reapply.

Conclusion

The tenant's application is dismissed.

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 07, 2020

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Residential Tenancy Branch