Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **MNDCT FFT**

Introduction

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

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of $14,160 pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

This hearing was reconvened from a prior hearing on February 6, 2020, following which I issued an interim decision, in which I address the issues of service of application materials and *res judicata*. I will not repeat those findings here.

Preliminary Issue – Landlord's written submissions and late evidence

Two days prior to the reconvened hearing, the landlord served the tenant with copies of his revised written submissions, response to the tenant's written submissions, and a supplementary evidence package. The evidence package included emails and text messages between the tenant and landlord or landlord's agent, as well as a statement from a witness of the landlord, and a call log from the landlord's lawyer's office.

Rule of Procedure 3.15 requires that a respondent's evidence be served no later than seven days prior to a hearing.

The tenant consented to the emails and text messages between herself and the landlord and landlord's agent being entered into evidence. She did not consent to any of the other documents being entered into evidence.

Accordingly, I admit those documents consented to be entered into evidence and exclude all other documents in the supplemental evidence package from evidence.

Written submissions are not evidence. They are not proof of any fact alleged by a party. Rather, they are helpful resource that parties may provide the arbitrator to assist them in

making their submissions. Written submissions are not therefore entered into evidence; they are to be accepted by an arbitrator. There is no obligation on a party to provide an opposing party with the contents of their argument in advance of the hearing. In the circumstances, I find it appropriate to accept the landlord's written submissions and rebuttal, as, if I refused to accept them, the landlord could simply to read them aloud during the hearing to the same effect. This would not be an efficient use of time.

Additionally, the tenant expressed a strong desire not to adjourn this matter further. She testified that the dispute process has been exceedingly stressful for her, and as such she wanted the April 16, 2020 hearing to be the final hearing. As such, I permitted her to submit written reply submissions to the Residential Tenancy Branch (limited to 10 pages) by April 27, 2020, to respond to the landlord's submissions. She did this, and I have considered these submissions in writing this decision.

Issues to be Decided

Is the tenant entitled to:

1) a monetary order of $14,160 in compensation for her loss of quiet enjoyment; and
2) recover her filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting November 1, 2017. Monthly rent was $1,180 and is payable on the first of each month. The tenant paid the landlord a security deposit of $590, which the landlord returned to her at the end of the tenancy. The tenant gave notice to end the tenancy on August 25, 2019. The tenancy ended on September 20, 2019.

The rental unit is a basement suite in a single detached home. The upper unit is occupied by other tenants of the landlord (the "**Upper Tenants**").

The tenant testified that she vacated the rental unit due to prolonged and persistent disturbances caused the Upper Tenants.

Tenant's Position

The Upper Tenants moved into the upper unit shortly in December 2018. The tenant testified that throughout the holiday season they made excessive noise. She testified that they frequently entertained and made "lots of noise until anywhere from 2am to 4am, almost nightly." She testified they also dragged furniture across the floor. On one

occasion, when the Upper Tenants' children were making excessive noise, she knocked on the door to ask the Upper Tenants to be quiet, but they were not home. She testified she spoke to the children, who apologized and were quiet thereafter.

The tenant testified she complained to the landlord's son (who would act on behalf of the landlord) about the Upper Tenants in January 2019. She testified that the landlord's son asked her if she would like him to do anything about it, but that she asked him not to, as she recognized they had just moved in. She wanted to give them an opportunity to settle into a routine once the holidays passed.

The tenant testified that the Upper Tenant's conduct did not improve once the holidays passed. She testified that they continued to entertain loudly. She testified that they would play "bongo drums" late into the night, which disturbed her greatly. The sliding dining room door which opened onto the upper patio of the upper unit is located directly above the tenant's bedroom. She testified that the Upper Tenants opened and closed the door repeatedly during the night, which would wake her up or make it impossible for her to sleep.

The tenant testified that she complained to the landlord's son verbally on several occasions after first doing so in January 2019. However, she testified that, on May 4, 2019, following a very loud party with bongo drums, she reached her breaking point. She texted the landlord's son of May 6, 2019. The following exchange occurred:

Tenant:

> Hi [landlord's son], I have a question. When I started renting here, one of the rules from the rental agency specifically said "No parties". I'm assuming that rule applies to the renters upstairs as well, correct".

Landlord's Son

> Yes I think so, but I need double check.
>
> I will asking agency [right now]

Tenant

> Yes, please do. I'm going to have a meeting with the father tomorrow and I want to make sure I have my facts straight. Thank you

Landlord's Son

> Ok. Is the renters upstairs had a party yesterday?

Tenant

They've had many. But the worst was on Saturday night. Playing bongo drums and everything. I cranked my TV up to 100… as loud as it would go… to give them a hint. I left it that loud for 30 minutes. But they wouldn't quiet down. IU had to get up early for work and I needed to go to sleep but there was no hope of that. I sent him a text mat 10:30 and he responded at 11:40…but they still kept me up til after 1am. I was so tired at work. This has happened quite a few times but this was the loudest they've been. They also keep using the sliding door above my bedroom at all hours of the night ALL THE TIME. In the last week I've been woken by that door so many times… 1am, 2:00, 2:30, 3:00, 3:30, 4:00. And then I can't fall back to sleep. I told him I'd like to have a talk with him ad he said Tuesday. So that's why I'm asking about this no parties rule. I can't live like this. It's not fair. I need sleep.

Landlord's Son

But in rules it's not specific to write you can't have party, but we said you can't have a party at night.

Just talk to him directly

I already told agency

Tenant

When I started renting, I remember the agency saying no parties. If I can tell him no more parties, and to stop using the sliding door all night, that will help. There has to be mutual respect. I don't make noise or disturb them at all and they need to be mindful when they know I live here too.

Landlord's Son

Yes I understand

We will figure that

Tenant

Thanks [landlord's son]. I really like living here. But I sure liked it so much better when you guys lived upstairs

In her written statement, the tenant wrote:

> [the landlord's son] asked again if I wanted him to speak to the tenant. I told him that I had already arranged for a meeting with him via text message the night of the loud party with bongo drums on Saturday May 4th. I wanted to try to sort things out between us, as good neighbours should. I met with [**FM**, one of the Upper Tenants] on Sunday May 12th around 5:30pm. In short, Faheem agreed to stop using the sliding door above my bedroom late at night, but would not agree to compromise anything else. He told me that this is what they do and how they live, and his family's happiness is all that matters to him. He actually did refrain from using the sliding door for about two weeks, then he started right back up again, and the noise and disturbances got continually worse.

The tenant wrote that when she could not come to a peaceful resolution with the Upper Tenants herself, she complained to her then-rental agent who arranged two sit-down meetings. The tenant provided copies of an email dated July 13, 2019 in which she provides details of the disturbance to her then-rental agent.

The tenant testified that she started keeping a noise log as of June 22, 2019. She testified that she made a new entry contemporaneously with each disturbance. She entered a copy into evidence. It lists 60 entries of disturbances between June 22 and Aug 30, 2019 (some entries logging multiple disturbances) including the sliding dooring being opened late at night, "deliberate stomping", furniture dragged across the floor, and a small party.

The tenant testified that she met with FM and the current property manager ("**DL**") on July 20, 2019, regarding the noise issue, but that she found it unhelpful. She testified that DL didn't look at the noise logs she provided him and advised her that she should consider looking for a different place to live. She testified that DL told her that he spoke to the neighbors, who told him they had no issues with the Upper Tenants.

The tenant argued that this was not the case. She provided a signed letter from a neighbor (the neighbor's name was not legible on the letter, however) dated July 1, 2019 which stated that the Upper Tenants are "a bit noisy" and that they "play music outside on their porch during the day and even at times until late at night. They also sometimes throw parties that go until late at night without warning the neighbors."

The tenant testified that the Upper Tenants' conduct did not relent following this July 20, 2020 meeting. She felt she had no choice but to move elsewhere.

The tenant also testified that the FM sprayed water into the rental unit on one occasion and dumping garbage on her doorstep on another.

The tenant testified that, as a result of the disturbances, she lost a significant amount of sleep, and that this negatively affected her performance at work. She entered a statement from a co-worker into evidence, who wrote that the tenant was often tired at work, and this made her "irritable and lethargic". She wrote that the tenant advised her that the she was frequently kept up all nights by the Upper Tenants, and that, once the tenant moved to a new home, the tenant returned to "her old self".

The tenant submitted two letters from friends of hers who stayed in the rental unit. In the first, dated January 11, 2020, the tenant's friend ("**JB**") testified that she spent one night in the rental unit. She wrote that the sliding door above the bedroom kept opening at all hours of the night and she got no sleep. JB also wrote that every time she visited the rental unit, the noise from the upper unit was far beyond the normal sounds of living and that she had a hard time staying for a visit. JB did not specify what dates her visits were.

The landlord entered an affidavit of JG, a legal assistant of counsel for the landlord into evidence. In this affidavit JG recounted the details of a phone call that the landlord's counsel had with JG on January 24, 2020. In essence, the phone call was a cross-examination of JB.[1]

In this conversation, JG stated that she stayed over at the rental unit a few months prior (either at the end of summer or maybe November 2019, she was not certain). JB stated that she was horrified by how inconsiderate the Upper Tenants were. She stated that she heard lots of stopping and jumping while she was at the rental unit. The landlord's counsel asked JB "was it really bad just like you wrote in the email, that the sliding door above [the tenant's] bedroom kept opening at all hours of the night?" and JB responded "No, it wasn't like that. They weren't like doing it every hour, but probably 3 to 4 times in total."

In another letter, the tenant's friend ("**MW**") wrote that she visited the rental unit a few times and was shocked by the noise coming from the upper unit. She wrote that there were loud crashes and stomping sounds above the living room and that it sounded like the Upper Tenants were moving furniture around. She wrote that the sounds lasted a long time and that they occurred "nearly every time" she visited.

On her application for dispute resolution, the tenant claimed compensation in the amount of $14,160. She wrote:

[1] There is nothing in the Rules of Procedure preventing this course of action and section 75 of the Act states that the rules of evidence do not apply to the Act. However, I note that Rule of Procedure 5.3 provides a mechanism by which a party may summon a witness to appear at a hearing for cross-examination, and that this is generally preferable to a cross-examination recounted in a third-party's affidavit.

> my rights to quiet enjoyment and freedom from unreasonable disturbance have been violated and the agency's response of telling me to move is unacceptable. I have lost my cat over this, it has affected my job, and my mental health.

I note that $14,160 is equal to one year's rent ($1,180 x 12 months). At the hearing, the tenant testified that she was unable to locate another rental unit to move to that was large enough for her to keep all of her possessions and that would allow her to keep a cat. She testified that she had to give away her cat and that she "get rid of" the following:

1) a grand piano given to her by her parents when she was six;
2) a portable dishwasher;
3) portable fireplace;
4) two dressers;
5) a love seat; and
6) an antique vanity that belonged to her parents.

She did not submit any evidence as to the monetary value of these items.

The tenant asserted that, in various jurisdictions in the United States, parties are entitled to between $5,000 to $7,500 in non-economic damages for loss of a pet. She provided excerpts from websites in support of this, but no legislation or case law. She did not provide any Canadian authorities in support of her claim for compensation for the loss of her cat.

Landlord's Position

The landlord disputes much of the tenant's testimony. The landlord submitted an affidavit of DL into evidence in which he stated that the tenant made a "one-time complaint" about the noise from the upper unit on May 5, 2019. He wrote that the landlord instructed him to talk to the Upper Tenants right away.

DL wrote that the tenant complained again in June 2019 about the Upper Tenants throwing loud parties and making excessive noise. He and the landlord made inquiries of the neighbors, and DL wrote that the neighbors did not have any complaints or notice anything unusual about the Upper Tenants.

DL wrote that for the five months after the Upper Tenants moved in, the landlord did not receive any complaints from the tenant about their conduct. He wrote that, following the May 5, 2019 text message to the landlord's son, he did not receive another complaint until June 17, 2019. DL testified that he, the landlord's wife, and a friend of the landlord attended the upper unit on July 23, 2019 to inspect it to see if the Upper Tenants had unreported guests staying with them or if they were throwing large parties. He wrote that he spent 1.5 hours in the upper unit, inspected it and "did not notice anything

suspicious". He did not see any scratches on the floor which would suggest that furniture was moved.

DL also gave testimony at the hearing, where he confirmed much of what was in his affidavit. Additionally, he testified that during the inspection on July 23, 2019, he (nor any of those assisting him in the inspection) visited the rental unit. He stated that he did not think this was necessary, because he saw no scratches on the floor, there were area rugs on the floor and saw no wear and tear on the sliding door. He testified that, based on this and based on the fact that the tenant had not provided any video or audio recordings of the noise, he did not believe the noise was as reported by the tenant. He testified he believe that the noises complained of were simply noises associated with living in an old house. (He wrote in his affidavit that the house was 30 years old and had a wood frame.)

DL admitted that he told the tenant that she should look for a different place to live. However, he testified that he did so because he believed that the noise issues were not caused by the actions of the Upper Tenants, but based on the character of the house, and that, as such, the rental unit would never be as quiet as the tenant desired.

FM testified at the hearing. He stated that he hosted a baby shower on July 22, 2019 for his eldest daughter and that they celebrated his son's graduation at that party. He stated that 17 to 20 guests were present, and that it was a "family party". He denied that anyone played bongo drums or was unreasonably loud. He testified that, despite this, the tenant called the police on him. He stated that the police attended the upper unit, but took no action, and apologized for disturbing him. The landlord did not provide any corroboration of this (such as a copy of the police incident report).

FM also admitted that he threw a 50th birthday party for himself in May 2019, but that this was not unreasonably loud either. He denied that he or any of his family stomped on the floor or dragged furniture across the rooms. He testified that on a typical day his family may listen to the radio or music over a streaming app, but that his children often have their headphones on for this, so that it would not cause any noise that the tenant could here. He stated that, when he moved in, he was unaware that the sliding door in the dining room was above the tenant's bedroom. He testified that, once he became aware of this, his family stopped using it late at night.

The landlord's counsel advanced a two-pronged argument. She argued that the disturbances alleged by the tenant were not unreasonable and were merely the result of the age and character of the house. She argued that the landlord investigated the tenant's complaint once made, and that concluded that there was no unreasonable disturbance. As such, she argues, the landlord has not breached the Act. She asserted that a tenant must expect a reasonable amount of noise, especially during the day, when living in close proximity to other tenants, and that tenants should expect poorer soundproofing in an older building compared to a more modern building.

The landlord's counsel also argued that, if the noise did occur as alleged by the tenant, the breach of the tenant's right to quiet enjoyment was "unintentional and mild". She argued that the noise was not caused by the landlord directly, that the noise, if proven unreasonable, remained uncorrected from June 18 to September 27, 2019, and that it likely did not occur every day. She argued that the landlord acted in good faith towards the tenant in attempting to resolve the tenants' complaints.

The landlord's counsel argued that, if the tenant is entitled to compensation for the tenant's loss of quiet enjoyment, that a 15 to 20 percent rent reduction (and not a full indemnification, as claimed by the tenant) is appropriate. She submitted two decision of the Residential Tenancy Branch in support of this position.

Analysis

Loss of Quiet Enjoyment

Section 28 of the Act states:

> **Protection of tenant's right to quiet enjoyment**
>
> **28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:
>
> […]
>
> (b) freedom from unreasonable disturbance;

Rule of Procedure 6.6 states:

> **6.6 The standard of proof and onus of proof**
>
> The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.
>
> The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenant bears the evidentiary burden to prove it is more likely than not that the landlord breach section 28 of the Act by failing to provide her with the quiet enjoyment she is entitled to.

Policy Guideline 6 states:

> 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.

So, there is no requirement that the landlord cause the disturbance that deprives the tenant of her quiet enjoyment. Rather, all that is required is that the landlord be aware of the disturbance, and that the landlord fail to take reasonable steps correct it.

Upon considering the documentary evidence, the affidavits and written statements of witness, the testimony of the witnesses and the tenant at the hearing, and the submissions of the parties, I find that it is more likely than not that the tenant was unreasonably disturbed by the Upper Tenants.

In coming to this conclusion, I rely on the noise logs submitted into evidence by the tenant, which show continuous disturbances over the course of two months. Additionally, when coming to a determination as to the severity of the disturbances (that is, if they reached the threshold of unreasonableness), I considered the written statements of JB and MW. Both characterized the noise caused by the Upper Tenants as beyond what would usually be expected (JB wrote it was "far beyond the normal sounds of living" and MW described "loud crashes and stomping sounds" that "lasted a long time"). These descriptions corroborate the tenant's testimony as to the severity of the disturbances caused.

I do not find the evidence presented by the landlord regarding the amount of noise caused by the Upper Tenants to be particularly useful in determining whether the tenant was unreasonably disturbed.

Neither witness called could give any direct evidence as to what sounds could be heard in the rental unit. It is not surprising that FM was unable to provide this evidence, but I would have expected DL to provide such evidence. However, DL determined that it was not necessary for him to inspect the rental unit during his inspection of the upper unit, to see what kinds of noises resulted from FM undertaking regular activities in the upper

unit (for example, how much noise is caused by the sliding door opening in the bedroom, a chair being moved on along the floor, or normal footsteps). I find that the failure to take such a step in investigating the tenant's noise complaint to be both surprising and unreasonable. Had he done so, he would have been able to determine if ordinary activities caused the noise the tenant complained of. If they did not, DL may have acted differently towards the Upper Tenants.

Accordingly, I do not find that the landlord to reasonable steps to correct the disturbances caused by the Upper Tenants. Investigating what actions upstairs cause what noise downstairs is a crucial part of any noise investigation by a landlord. By failing to do this, I find that the landlord has failed to ensure the tenant's right to quiet enjoyment by keeping her free from unreasonable disturbance.

Duration of Disturbance

I do not find that the landlord was aware of the tenant's deprivation of quiet enjoyment as early as January 2019. The tenant provided no corroboration of this. Indeed, the first documentary evidence she provided regarding her reporting the issue to the landlord (text messages to the landlord's son on May 6, 2019) contain no reference to any prior disturbance by either the tenant or the landlord's son.

If the tenant had reported the Upper Tenants to the landlord's son prior (as the tenant testified she did) I would have expected some reference to this during this text message conversation (either by the landlord's son, or by the tenant herself). Based on my review of the exchange, there is no reference or allusion to any prior complaint by the tenant.

As such, and as the tenant has not provided any corroboration of early communications with the landlord or the landlord's agents regarding noise complaints, I find that that the landlord was first made aware of the tenant's noise complaints on May 6, 2019.

The landlord's counsel argued that the landlord's obligation to correct the complaint did not start until June 18, 2019, when the tenant made a second complaint, as the tenant stated she indicated she would handle the noise issue in the May 6, 2019 text message exchange. I am not persuaded by the is argument. Policy Guideline 6 states:

> 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.

Policy Guideline 6 does not require that the tenant request the landlord rectify the problem, it only requires that the landlord be aware of the problem. Additionally, based on the affidavit of DL, despite the tenant indicating that she was going to speak with the Upper Tenants, DL contacted the Upper Tenants "right away" and conveyed the tenant's concerns to them.

As such, I find that the landlord was aware of the tenant's deprivation of her right to quiet enjoyment as of May 6, 2019. I find that the landlord did not take reasonable steps to correct the problem from this date until the date the tenant vacated the rental unit (September 27, 2019). Accordingly, I find that the tenant is entitled to compensation for this period of time (approximately five months).

Tenant's Compensation

1. Amount of Compensation

    a. Loss of Quiet Enjoyment

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

(the "**Four-Part Test**")

As stated above, the landlord has breached the Act and the tenant has suffered a loss (the loss of her quiet enjoyment of the rental unit) as a result of this breach.

Policy Guideline 6 states:

> **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 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.

As such, a tenant's compensation for loss of quiet enjoyment is calculated as a retroactive reduction of monthly rent on a percentage basis connected to the extent the tenant was deprived of her right to quiet enjoyment of the rental unit.

In her application, the tenant sought a 100% rent reduction for 12 months. As stated above, the tenant is entitled to compensation for five months. However, I do not find a 100% rent reduction appropriate in the circumstances, as the tenant was not entirely deprived of the use of the rental unit during the time; she was significantly disturbed. She had shelter, a place to store her belongings, and a place to sleep. I acknowledge that the disturbances complained of disrupted her ability to sleep, however, I do not understand the tenant's evidence to be that this was every night for five months.

The landlord's counsel argued that a 15% to 20% rent reduction would be appropriate. In support of this position, the landlord provided two prior decisions of the RTB.

The first, dated February 14, 2018, involved a tenant's application for compensation due to the wall in one of the bedrooms being moldy, and to the carpet having an offensive odor. The bedroom was roughly 20% of the square footage of the rental unit. The bedroom was remediated, and the tenant had to spend two nights in a hotel (at the landlord's expense). The tenant lost the use of her bedroom for four months.

The presiding arbitrator found that this constituted a substantial interference to the tenant's enjoyment of the property, as the landlord caused the bedroom to be uninhabitable. The arbitrator ordered a 22% retroactive rent reduction, based on the size of the bedroom in relation to the rest of the rental unit.

The second decision, dated February 15, 2018, involved a case where the tenant was disturbed during the day due to noise related to the replacement of the roof of her apartment building. The noise lasted for three months, started at 7:00 am and continued to 6:00 pm on weekdays, and on some weekends. The tenant also claimed for 10 days of lost wages due to an inability to sleep (the decision does not explain how noise in the daytime would cause the tenant to lose sleep).

The presiding arbitrator determined that the tenant was deprived of his right to quiet enjoyment. The tenant was awarded a 25% rent reduction, as other than a difficulty sleeping, the tenant enjoyed full use of the rental unit. The arbitrator dismissed the claim for lost wages due to insufficient evidence of mitigation.

I do not find either of these cases particularly applicable to the case at hand. In the first, the disturbance was not caused by noise, but rather mold and construction. In the second, the noise did not occur at night, but rather was caused by legitimate and necessary construction work, which was predictable, and ended once the work was completed.

In the present case, the disturbances occurred at night, were not predictable, and continued until the end of the tenancy. I have no reason to believe that the disturbances would have stopped if the tenant remained in the rental unit. Accordingly, I find that the rent reduction must be greater than those in the two cases provided by the landlord.

I find that, by reporting the noise issues to the landlord and by speaking with the Upper Tenants, the tenant acted reasonably to minimize her loss of quiet enjoyment.

In the circumstances, a 50% rent reduction is warranted, due to the severity, frequency, and timing of the disturbances. Accordingly, I order that the landlord pay the tenant $2,950 ($1,180 x 50% x 5 months).

b. Furniture

The tenant also argued that she is entitled to compensation for the loss of her furniture and her possession, when she moved to a smaller rental unit.

In her application for dispute resolution, the tenant did not make a claim for compensation for loss of furniture. Accordingly, she cannot make a claim for it at the hearing. The landlord is entitled to notice of the bases of the tenant's claim in advance of the hearing. Accordingly, I decline to grant the tenant any amount for the loss of the furniture.

c. Cat

The tenant did, however, reference the fact that she lost her cat due to being deprived of her right to quiet enjoyment in her application for dispute resolution. I find that this reference is sufficient to form the basis of a claim for compensation for loss of the cat.

As stated above, the landlord breached the Act. However, I do not believe that the loss of the tenant's cat was reasonably foreseeable as a result of this breach. In any event, if it was reasonably foreseeable, I find that the tenant has failed to establish the monetary value of the cat.

The tenant has reference authorities from the United States as to appropriate compensation for the loss of a cat. However, she did not provide those authorities to me for my review. I am unaware of the bases for compensation in those authorities (for example, does the cat have to have died, or is being given away sufficient? Does the respondent have to be directly responsible for the loss, or merely vicariously liable due to the actions of another?). Without additional information, I cannot assess the applicability of these authorities.

Additionally, these referenced authorities are from a different country, with different laws and legal traditions. The tenant provided no Canadian authority as to the appropriate amount of compensation for the loss of a cat.

As such, I assign the American authorities referenced by the tenant no probative weight.

I find that the tenant has not quantified the loss suffered with relation to the loss of her cat. As such, she has not met the third step of the Four Part Test. I decline to grant the tenant any compensation in connection with the loss of her cat.

d. Alleged Conduct of FM

The tenant alleged that FM left garbage on her doorstep and sprayed water into the rental unit. I do not find that these actions, if true, constitute a breach of the Act on the part of the *landlord*. As such, the first step of the Four-Part Test is not satisfied. I decline to order that the landlord pay any amount to the tenant in relation to these allegations.

2. Offsets to monetary order

As noted in my interim decision made February 6, 2020, when the landlord returned the security deposit to the tenant, he made the cheque out for an additional $200, which the tenant has retained. As such, that amount must be deducted from any monetary amount made in favor of the tenant.

Additionally, and as set out in the interim decision, the parties agreed that the September 2019 rent is owing, and that its amount should be offset against any monetary award made in favor of the tenant. Accordingly, $1,380 should be deducted from any monetary order made.

3. Filing Fee

Pursuant to section 72(1) of the Act, As the tenant has been partially successful in her application, the landlord must reimburse her the filing fee ($100).

Conclusion

Pursuant to sections 67 and 72 of the Act, I order that the landlord pay the tenant $1,670, representing the following:

Compensation for loss of Quiet Enjoyment	$2,950
Filing Fee	$100
Deduction for September 2019 rent and overpayment of deposit	-$1,380
Total	**$1,670**

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 15, 2020

Residential Tenancy Branch