



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to be allowed to reduce rent for repairs, service or facilities agreed upon but not provided, to have the landlord comply with the Act, and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Issues to be Decided

Are the tenants entitled to a rent reduce for repairs, service or facilities agreed upon but not provided?

Should the landlords be ordered to comply with the Act?

### Background and Evidence

The tenancy began on May 1, 2019. Rent in the amount of \$1,500.00 was payable on the first of each month. A security deposit of \$750.00 was paid by the tenants. The tenancy ended on May 1, 2020.

The tenants claim follows:

a.	\$300.00 per month rent reduction x 12 months	\$3,600.00
b.	Compensation for moving equal to one month's rent	\$1,500.00
c.	Filing fee	\$ 100.00
	<b>Total claimed</b>	<b>\$5,200.00</b>

The tenants testified that they seek a reduction of rent based on the lack of privacy, lack of sleep and quiet enjoyment of the premise. The tenants stated that there was essentially very little sound proof and you could hear basic conversation, music, and other noise.

The tenants testified that they notified the landlord that this was a problem on May 6, 2019, and the landlord purchases some sound proofing that was added to the venting. The tenants stated they were not happy with the landlord's solution and the landlord did not resolve the problem during there tenancy.

The tenants testified that they ended the tenancy; however, that was only because they could no longer live their due to the ongoing noise. The tenants stated that the landlord should have to compensate them the equivalent of one months rent for the inconvenience of moving due to the landlord breaching the Act.

The landlord testified that the building was built in 1938 and noise will travel. The landlord stated that they receive only two complaints from the tenants during the tenancy. The landlord stated that the first compliant was on May 6, 2019, and they spoke to the other occupant. The landlord stated they also purchased some sound proofing for the vents. The landlord stated that the tenants were informed at that time that noise does travel in the building and if they did not want to live there, they would let them out of their fixed term lease without penalty.

The landlord testified that the other complaint they received was on March 21, 2020, approximately ten months later. The landlord stated that the tenants provided a disturbances log as evidence; however, they were never notified of any of this complaint during the tenancy and has no way to determine if they are true.

The landlord testified they are not responsible for the tenants moving costs.

### 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 tenants have 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 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

### **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:

- (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.

In this case, the tenants provided the landlord with two noise complaints during their tenancy. The first complaint was received on May 6, 2019, and the landlord address the issue at the time by speaking to the occupant and by providing sound proofing for the vents. The second noise complaint was on March 21, 2020, and the landlord address the tenants' concerns.

The tenants are alleging noise disturbance throughout their tenancy and have submitted a log as evidence which is in an excel spread sheet. The evidence of the tenants was that they did not inform the landlord because it was a waste of time. I can put no weigh on such a log when the tenants did not notify the landlord of any of these complaints. The landlord has the right to investigate, each and every complaint to determine if they are valid. A landlord cannot be held responsible when not notify of a problem. I find the tenants have failed to prove the landlord has violated section 28 of the Act.

**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.

In this case the tenants are alleging the landlord has breached section 32 of the Act. However, simply because there is insufficient sound proofing does not mean it is a health or safety issue. This premise was built in 1938, and it would be reasonable that noise would travel. This simply could be the age and character of the premise. The landlord is not required to upgrade the building simply because a tenant does not like the noise.

Further, the tenants have submitted various municipal documents. However, it is not my role to determine what if any of these apply or even if they are accurate. There is no document from a qualified person that has inspected the premise and determined it was a health and safety issue. I find the tenants have failed to prove the landlord has violated section 32 of the Act.

The tenants' application is dismissed without leave to reapply. The tenants are not entitled to recover the cost of the filing fee.

Conclusion

The tenants have failed to prove a violation of the Act by the landlords. The tenants' 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: June 08, 2020

---

Residential Tenancy Branch