



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing, and the tenant and one of the landlords gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

The parties agreed that all evidence has been exchanged, and all evidence provided as been reviewed and is considered in this Decision.

### Issues to be Decided

Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit?

### Background and Evidence

**The tenant** testified that this fixed-term tenancy began on August 1, 2010 and reverted to a month-to-month tenancy after July 31, 2011, and the tenant still resides in the rental unit. Rent is currently \$984.00 payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$400.00 as well as a pet damage deposit in the amount of \$300.00. Both deposits are still held in trust by the landlords. The rental unit is a basement suite, and the upper unit is also tenanted. The landlords do not reside on the

rental property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that a hearing was held on June 12, 2020 and a copy of the Decision has been provided for this hearing. In the Analysis portion, the Arbitrator stated, in part: "...I direct the landlords to provide quiet enjoyment to the tenant effective July 1, 2020." The tenant testified that he went through July and into August with the gentleman living in the upper unit who had threatened to kill the tenant, spit on the tenant and the tenant's dog and intimidated the tenant's family, and continued to blow marihuana smoke into the tenant's bedroom window. The landlords finally got rid of him around the first weekend in August, 2020.

The tenant was successful at the June 12, 2020 hearing in obtaining a monetary order in the amount of \$5,512.00 and the tenant is permitted to reduce rent for future months until that sum is realized, which the tenant testified will last until December, 2020.

However, a new tenant moved in and was painting in the upper unit till 1:00 a.m.; rolling paint and banging stuff. The tenant sent an email to the landlords on September 2 about disturbances on August 29 and until September 1, 2020. The upper unit was empty, and has hardwood floor, so it echoed. The tenant didn't speak to the new person upstairs, but the landlords told the tenant that they provided the paint to the upper tenant. The tenant had received an email from the landlords about painting upstairs, but there was no mention of doing until 1:00 a.m. The tenant heard nothing from the landlords about it after September 2, 2020.

The marihuana smoke was affecting the tenant's health and a doctor's note has been provided for this hearing. The previous upstairs tenant continued to spit on the tenant's bedroom window and smoking marihuana through July, 2020. The tenant was being tormented day after day and had no idea when the upstairs tenant would be leaving. Perhaps the upstairs tenant moved out on August 1, 2020, but renovations then started in the upper unit.

The tenant claims the equivalent of 2 months rent, or \$1,968.00 as compensation for loss of quiet enjoyment and recovery of the \$100.00 filing fee.

**The tenant's witness** was identified by the tenant as his nephew. The witness testified that on July 19, 2020 the witness attended at the landlords' home with the tenant. The witness placed 2 envelopes at the door, knocked on the door and stepped back about 10 feet due to COVID-19. After about 30 seconds a woman opened the door, picked up the envelopes and went inside.

**The landlord** testified that the tenant did not serve the landlords with the hearing package as required. A video of the tenant's witness at the landlords' door has been provided for this hearing as well as a still photograph of the 2 packages leaning up against the door. The landlord testified that only 2 females reside in the landlords' home; the landlord and the landlords' 12 year old daughter. There is no young lady, and no one was home.

The landlord further testified that the landlords were not aware of the new issues brought up by the tenant about the previous tenant. The photographs provided by the tenant are the same as he included for the previous hearing. It seems that the tenant doesn't want to communicate with the landlords.

In May, 2020 the tenant told the landlords not to get involved; that the tenant was going to police, and now the tenant is using that against the landlords. Nothing from the RCMP has been received by the landlords.

Also in May, 2020 landlords, who had also received complaints from a neighbouring day-care about the marihuana smell and asked the tenant about obtaining video evidence so the landlords would have evidence to give a notice to end the tenancy to the tenant in the upper level of the rental home, but the tenant wouldn't provide it. The day-care provided some video evidence, but the tenant asked the landlord to wait because he had an antique vehicle parked there and needed to get it moved first. So the landlords waited. During the June 8 hearing was the first that the landlords knew that the tenant had removed his antique vehicle. The landlords were waiting to hear that the tenant had removed it, but the tenant didn't notify the landlords until the hearing had commenced.

The next day, June 9, 2020, the landlords made an Application for Dispute Resolution and was successful in getting an expedited hearing on June 22, 2020. The landlord told the Arbitrator that the upstairs tenant had to be out by July 1, 2020, but the Arbitrator said that was only a week away and the upstairs tenant needed time to find a place. The landlords obtained an Order of Possession effective August 31, 2020, but they emailed the landlords on July 21, 2020 stating that they found a place to move into and moved out of the upper level of this rental home on August 1, 2020.

Between the end of June and the entire month of July, 2020 the tenant didn't mention anything to the landlords.

The tenant has no tolerance of any normal human noises like walking. He complained about a baby crying and a crawling sound and the landlords had custom made carpets installed upstairs for that. It's not plain hardwood as the tenant testified. There are human beings living upstairs. The tenant has his TV on loud all day and night and another tenant asked him to stop swearing, slamming cupboards and yelling. The tenant's claim is not

reasonable. The landlords have tried to communicate with all tenants, and do not understand why the tenant didn't notify the landlords right away about any disturbances during the painting in the upper unit rather than waiting until September 2, 2020, other than to add to the evidence.

### Analysis

The tenant and the witness both testified that the landlords were served with the Application for Dispute Resolution, evidence and notice of this hearing by leaving 2 envelopes at the landlords' residence, with a young woman. The landlord disputed that testimony, referring to a video provided as evidence for this hearing. I have reviewed the video and a photograph provided by the landlords showing the envelopes leaning against the door, and I am not satisfied that anyone opened the door to collect the envelopes from the tenant's witness.

The *Residential Tenancy Act* specifies that:

- 89** (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:
- (a) by leaving a copy with the person;
  - (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
  - (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
  - (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
  - (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

In this case, the tenant did not use any of the above methods for service upon the landlords.

Where a party makes a claim for monetary compensation for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;

3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the landlords have provided copious amounts of evidence that satisfies me that the tenant complains about every noise, including normal living noises such as a baby crying. I also consider the tenant's testimony that he did nothing about the painting noises; he didn't notify the landlords or speak to the newer tenant upstairs.

The *Act* also specifies how a tenancy ends, and sometimes the landlord may not be able to obtain an Order of Possession as soon as the landlord or another tenant might want. In this case, the landlords did attempt to have the previous tenant removed, which actually happened on August 1, 2020.

In the circumstances, I agree with the landlord that the tenant sent an email to the landlords after-the-fact in order to gather evidence for another hearing.

I find that the tenant has done nothing to mitigate any loss of quiet enjoyment, and did not serve the landlords with the required material in accordance with Section 89 of the *Residential Tenancy Act*. Therefore, I dismiss the tenant's application in its entirety without leave to reapply.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety 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: September 25, 2020

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Residential Tenancy Branch