



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Real Property Management Central  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      TT: MNDCT, MNSD, FFT  
                                 LL: MNDCL-S, FFL, MNRL

### **Introduction**

This hearing dealt with applications from both the landlord and tenants pursuant to the *Residential Tenancy Act* (the “*Act*”).

The landlords applied for:

- A monetary award for damages and loss pursuant to section 67;
- Authorization to retain the deposit for this tenancy pursuant to section 38; and
- Authorization to recover the filing fees from the tenants pursuant to section 72.

The tenants applied for:

- A monetary award for damages and loss pursuant to section 67;
- A return of all or a portion of the deposits for this tenancy pursuant to section 38; and
- Authorization to recover the filing fee from the landlords pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by their agent KL (the “Landlord”).

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Is either party entitled to a monetary award as claimed?

Is either party entitled to the deposit for this tenancy?

Is either party entitled to recover the filing fee from the other?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This fixed-term tenancy began on November 1, 2020 and was scheduled to end August 31, 2021. The rental unit is a suite in a multi-unit strata-managed building. The monthly rent was \$1,850.00 payable on the first of each month. A security deposit of \$925.00 and pet damage deposit of \$925.00 were paid at the start of the tenancy and are still held by the landlord. The signed tenancy agreement includes a clause that provides that if the tenants end the tenancy before the end of the fixed term the tenant will pay the equivalent of one-half month's rent as liquidated damages.

The tenants gave written notice to end the tenancy by a letter dated December 7, 2020 with an effective date of January 1, 2021. The tenants provided a forwarding address in the letter.

The Landlord submits that they took reasonable efforts to find a new occupant for the rental unit and were successful in finding someone to take possession as of January 4, 2021. The landlords filed their application for dispute resolution on January 14, 2021 and seek a monetary award in the amount of \$179.03 for the three days loss of rental income from January 1, 2021 to January 3, 2021 and liquidated damages in the amount of \$925.00.

The tenants submit that the landlord failed to ensure quiet enjoyment of the rental unit as there was constant noise from neighbouring suites throughout the course of their tenancy. The tenants provided evidence that they reported the issue to the landlord, the strata corporation managing the rental building and police but say the issue was not adequately resolved. The tenants submitted video recordings of the rental unit and written statements from witnesses about the level and frequency of the noise experienced in the rental unit. The tenants submit that the previous occupant of the

rental suite was aware of the noise issue and had reported it to the landlord during their tenancy.

The tenants submit that they incurred costs due to the volume and frequency of the noise including purchasing headphones, staying in hotels, medical bills, and loss of income. The tenants seek a monetary award in the amount of \$4,887.00 for their out of pocket expenses, full reimbursement of rent paid during the tenancy and loss of income.

The Landlord testified that they took reasonable steps in response to the tenants' complaints including informing the owner of the property and the strata corporation and providing the tenants with a \$150.00 discount for the December 2020 rent. The Landlord submits that as the rental unit is in a strata managed building and they are solely the landlords for the rental unit they are limited in the actions available to respond to complaints regarding other residents.

### Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I am satisfied that the tenancy agreement signed by the parties includes a liquidated damage clause allowing the landlord to recover the amount of \$925.00, a pre-estimated amount of the cost of re-renting the suite, if the tenant ends the tenancy earlier than the full term.

I find that the amount of the damage and the circumstances in which the amount becomes payable to be sufficient to establish that this is a true liquidated damage clause and not a penalty clause.

I find there to be insufficient evidence to show that the landlord failed to comply with a material term of the tenancy agreement within a reasonable period after the tenant has given written notice allowing the tenant to end the fixed term tenancy on a date earlier than that specified under the tenancy agreement pursuant to section 45 of the *Act*.

While I accept that the tenant was unhappy with the level, frequency and extent of the noise from neighboring units in the rental building, based on the tenants' own evidence including copies of correspondence I find that the landlords addressed these complaints in a timely and reasonable manner investigating issues, communicating with other parties and making accommodations where it was reasonable. I accept that in a multi-unit building with the landlord solely responsible for the rental unit they are limited in their ability to investigate issues or take enforcement steps against other occupants of the building.

I do not find the evidence demonstrates that the landlord failed to comply with the tenancy agreement allowing the tenant to end the fixed term tenancy earlier than the date specified in the agreement.

I find that the clause in the tenancy agreement signed by the parties to be a valid and enforceable liquidated damage clause. I accept the evidence of the parties that the tenant ended the tenancy before the full term and as a result are obligated to pay the amount of \$925.00, the specified amount of the liquidated damages provided in the tenancy agreement.

Section 7 of the *Act* explains, "If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, "Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect."

In the present case the parties agree that the tenants gave notice to the landlord to end the tenancy on December 7, 2020. The landlord submits that they took efforts to re-rent the unit and were able to find a new occupant for January 4, 2021. The landlord seeks the loss of rental income for the period of January 1, 2021 through January 3, 2021 which they calculate to be \$179.03. I issue a monetary award in the landlords' favour for that amount accordingly.

The tenants seek compensation for loss in the value of the tenancy due to the ongoing noise from the neighboring units and for damages and loss arising due to the level, frequency and ubiquity of the noise. Section 65 (1)(f) of the *Act* read in conjunction with section 67, allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the Residential Tenancy Act speaks to a tenant's right to quiet enjoyment, and provides as follows:

**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.

Further section 7 of the Residential Tenancy Act states:

**7 (1)** If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find insufficient evidence in support of much of the tenants' monetary claim. I find the tenant's claim for a full reimbursement of the rent paid for this tenancy as well as costs for loss of income and other costs to be wholly out of proportion with the evidence. I find the tenants' evidence regarding the impact of the noise to be so hyperbolic as to have little credibility. I am not satisfied that the tenants' choice to vacate the rental unit and reside in a hotel to be a proportional response or warranted by the level of noise demonstrated in the tenants' evidentiary materials.

As noted above, I have found that the landlords' response to the tenants' complaints to have been reasonable, timely and appropriate under the circumstances. I do not find that there has been any breach on the part of the landlord that would give rise to a monetary award for damages or loss.

Nevertheless, I do find that there has been some impact on the value of the tenancy agreement arising from the noise caused by neighboring units. Based on the totality of the evidence I find that a monetary award in the amount of \$355.00, the equivalent of 10% reduction of the monthly rent for each month of the tenancy to be appropriate. In coming to this determination, I have also taken into consideration the monetary compensation already provided to the tenants by the landlord by way of the rent credit.

As the landlords were awarded the full amount of their claim, they are entitled to recovery of the \$100.00 filing fee for their application.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$1,204.03 from the tenant's security and pet damage deposit in full satisfaction of the monetary award issued in the landlords' favour

Conclusion

I issue a monetary award in the tenants' favour in the amount of \$1,000.97 on the following terms:

<b>Item</b>	<b>Amount</b>
Liquidated Damages	-\$925.00
Loss of Rental Income Jan 1-3, 2021	-\$179.03
Landlord's Filing Fees	-\$100.00
Less Security Deposit	\$925.00
Less Pet Damage Deposit	\$925.00
Less Monetary Award	\$355.00
<b>TOTAL</b>	<b>\$1,000.97</b>

The tenants are provided with these Orders in the above terms and the landlords must be served with this Order as soon as possible. Should the landlords fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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 14, 2021

---

Residential Tenancy Branch