



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORPORATION and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RR, OLC, FFT

### Introduction

On February 18, 2021, the Tenants applied for a Dispute Resolution proceeding seeking a rent reduction pursuant to Section 65 of the *Residential Tenancy Act* (the “*Act*”), seeking an Order of comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Tenants M.D. and B.D. attended the hearing. J.C. and K.S. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

M.D. advised that the Landlord was served the Notice of Hearing and evidence package by hand, but he was not sure when he did this. He also stated that they did not check to see if the Landlord could view their digital evidence prior to serving it, pursuant to Rule 3.10.5 of the Rules of Procedure (the “Rules”). K.S. confirmed that the Landlord was served this package was on March 1, 2021. While he acknowledged that this package was served late and not in accordance with Rule 3.1 of the Rules, he stated that he was prepared to proceed. He also advised that the Tenants’ digital evidence could be viewed and that he was prepared to proceed as well. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the

Landlord was served the Tenants' Notice of Hearing and evidence package. As well, I have accepted this evidence and will consider it when rendering this Decision.

K.S. advised that the Landlord's evidence package was served to the Tenants in person on May 11, 2021 and the Tenants confirmed that this package was received. As this evidence was served in accordance with the timeframe requirements of Rule 3.15 of the Rules, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Are the Tenants entitled to a rent reduction?
- Are the Tenants entitled to an Order to comply?
- Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

Both parties agreed that the tenancy started on October 1, 2020, that rent was currently established at \$1,450.00 per month, and that it was due on the first day of each month. However, the Tenants stated that they moved into the rental unit on September 3, 2020. A security deposit of \$725.00 and a pet damage deposit of \$200.00 were also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

Tenant M.D. advised that they are seeking compensation in the amount of **\$2,900.00** for a loss of quiet enjoyment as the Landlord had roofers conduct repairs in October 2020 and they were only given a notice of this work after it started. He stated that the notice did not indicate the start or end times for the construction, and the noise created by this

work was constant, intense, and excessive. As well, he stated that they have a new-born baby and they were concerned that the noise would affect the child's development.

He submitted that the noise and accompanying vibrations were so excessive that it shook a light fixture on the ceiling, which subsequently fell and broke. In addition, the workers used blowtorches as part of the repairs, and this caused the hallways and the rental unit to fill with smoke on multiple occasions. On three different instances, the building was evacuated by the fire department as a result of this smoke. He also stated that the workers threw loose electrical wires off the top of the building. He advised that when he contacted representatives of the Landlord about these issues, it was met with hostility. He referenced the evidence submitted to support their position.

Tenant B.D. advised that the repair work would start daily at approximately 6:30 AM and would sometimes continue until 8:00 PM, generally six days per week, with the work being done on one Sunday as well. She stated that it felt like the roof would cave in and they did not feel safe living there.

K.S. advised that the building is 50 years old and the roof needed to be replaced. He referenced an invoice of \$85,000.00 for the cost of these repairs to the 7,000 square foot roof. He stated that the construction started on October 14, 2020 and he referenced a notice dated October 9, 2020, submitted as documentary evidence, which outlined the start of the roof repairs. He stated that this notice was provided to the residents of the building. He testified that, in accordance with municipal by-laws, the construction work started no earlier than 7:00 AM and finished no later than 6:00 PM, Monday to Saturday. He acknowledged that the nature of this work is loud and that some noise is to be expected, but when M.D. contacted the office to complain of this noise, M.D. was combative and belligerent. He confirmed that the repairs were completed by December 22, 2020 and in addition, he stated that no work was done for approximately a three-week period in November 2020 due to the inclement weather. He submitted that the nature of the repairs to the roof would not entail constant banging. As well, as the rental unit was only 800 square feet, the roofers would not have been working above them all the time.

Regarding the smoke issue, he confirmed that the building was evacuated three times because the smoke alarm was triggered by the repair people blowtorching the roof. With respect to the light fixture that fell, he stated that the Landlord replaces bulbs with spiral bulbs and that the Tenants' evidence depicts a different type of bulb in the light fixture. He speculated that the light fixture may have been loosened because the Tenants replaced the bulb with their own and improperly fastened the fixture back to the ceiling.

## Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

With respect to the Tenants' request for an Order to comply, this issue was dealt with in a previous Dispute Resolution proceeding (the relevant file number is noted on the first page of this Decision). As such, this issue is dismissed without leave to reapply.

Section 28 of the *Act* outlines the Tenants' right to quiet enjoyment and states that the Tenants are entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas for reasonable and lawful purposes, free from significant interference."

Section 32 of the *Act* requires that the Landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenants.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

Policy guideline # 6 outlines the covenant of quiet enjoyment and states the following:

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.

With respect to the Tenants' claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

Regarding the Tenants' claims for compensation, there is no dispute that substantial repairs were undertaken on the roof starting in October 2020. While it is evident that the Landlord understands the requirement of Section 32 of the *Act* to repair and maintain the property, and while the Landlord's position that the renovations will benefit the residents long term is understandable, the residents are still entitled to freedom from unreasonable disturbance. There is no doubt that such an extensive construction project could inherently cause a substantial interference with the ordinary and lawful enjoyment of the premises. As well, it is also possible that this could be considered more than a temporary discomfort or inconvenience. However, as noted above, the burden is on the Tenants' to submit sufficient evidence to corroborate their claim. As well, it is necessary to balance the Tenants' right to quiet enjoyment with the Landlord's right and responsibility to maintain the premises.

When reviewing the totality of the Tenants' evidence before me, I acknowledge that there are some instances of noise in their videos. However, I do not find that they have provided sufficient evidence to corroborate the days or hours that this noise persisted, how frequent this noise was during these times, or that it occurred almost every day from October 2020 to January 2021.

Moreover, there appears to be two different types of bulbs in the light fixture, which lends weight to K.S.'s suggestion that the fixture may have been removed by the Tenants at some point and possibly not attached correctly. Based on the Tenants' limited compelling or persuasive evidence, I am not satisfied that they have adequately substantiated a claim of loss in the amount of \$2,900.00.

However, while I am not satisfied that the Tenants' established that there was a frequent and ongoing interference, or unreasonable disturbance, I do acknowledge that

the Tenants' day-to-day life did likely suffer and that they would have experienced some loss of quiet enjoyment due to this roof repair. This is especially evident given the fact that the building was evacuated by the fire department on three occasions. Consequently, based on a review of the evidence that the Tenants did submit, I find that the Tenants have justified a claim for compensation in the amount of **\$300.00**.

As the Tenants were partially successful in these claims, I find that the Tenants are entitled to recover \$50.00 of the \$100.00 filing fee paid for this Application.

### Conclusion

The Tenants are provided with a monetary award in the amount of **\$350.00** in satisfaction of these claims. Accordingly, the Tenants may deduct this amount from the next month's rent.

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 28, 2021

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Residential Tenancy Branch