



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, MNRT, MNSD

### Introduction

On February 12, 2021, the Tenant applied for dispute resolution under the *Residential Tenancy Act* (“the Act”) seeking money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to recover the cost of emergency repairs to the rental unit, and for the return of a security deposit.

The matter was scheduled as a teleconference hearing. The Landlord and Tenant were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Landlord stated that on February 26, 2019 he applied for dispute resolution and claimed against the security deposit. The Landlord stated that they attended the hearing and the Arbitrator authorized them to keep the security deposit towards damage to the rental unit that required repair. The Landlord provided the file number for the previous hearing.

The Tenant stated that she was not aware of a previous hearing regarding a claim against the security deposit.

Upon review of the previous file, I find that the Landlord applied to keep the security deposit on February 26, 2019. I find that a hearing was held on June 14, 2019 and the Decision authorized the Landlord to keep the security deposit towards damage to the rental unit.

I cannot re-hear and change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of Res judicata. Res judicata is a rule in law that a final decision, determined by an officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim.

I find that the Tenant's claim for the return of a security deposit was decided in an earlier hearing. The Tenant's claim for the return of a security deposit is dismissed.

The Tenant made this application on February 12, 2021 which is almost two years from the date the tenancy ended. The Tenant was asked why she waited almost two years to bring forward her claims. The Tenant stated that she was very sick, had depression, and then became sick with covid.

#### Issues to be Decided

- Is the Tenant entitled to money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement?
- Is the Tenant entitled to recover the costs of emergency repairs to the rental unit?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on November 15, 2018 on a month to month basis. Rent in the amount of \$1,000.00 was due on the first day of each month. A security deposit of \$500.00 was paid by the Tenant to the Landlord.

The tenancy continued for three months and ended on February 15, 2019.

#### Compensation for Moving

The Tenant is seeking \$3,000.00 for expenses related to moving into and out of the rental unit. The Tenant stated that she would never choose to move into a place for only three months.

The Tenant testified that due to construction noise, she had no enjoyment of the rental unit.

The Tenant stated that she received a Two Month Notice to End Tenancy from the Landlord on January 19, 2019 that had an effective date for the end of March 2019. She testified that she applied for dispute resolution to dispute the notice to end tenancy; however, she cancelled the hearing and decided to move out of the rental unit on February 15, 2019. She stated that living there was hell and she was being bullied by the Landlord, so she decided to move out.

The Tenant provided receipts for the costs of moving and for storage of her possessions until she was able to find a new place to live.

In reply, the Landlord Ms. R.A. provided testimony confirming that the Landlord issued a notice to end tenancy to the Tenant. The Landlord testified that the Tenant was causing intentional damage to the rental unit and the Landlord decided to stop renting the unit and occupy it themselves. The Landlord Mr. G.A. stated that they never intended to rent the unit for such a short time.

The Landlord stated that the Tenant chose to accept the notice to end tenancy and moved out of the rental unit early. The Landlord stated they gave proper notice and the Tenant chose to accept the notice and move out. The Landlord stated that they are not responsible to pay for the Tenant's moving costs.

The Landlord stated that the Tenants receipts include storage costs for items that were in storage while she was living in the rental unit.

The Landlord refuted that they bullied the Tenant and stated that they have provided reference letters from former Tenants.

### Security Deposit

The Tenant applied for the return of double the amount of the security deposit.

As noted above in this Decision, I find that the Tenant's -request for the return of a security deposit is an issue that was decided in an earlier hearing. The Tenant's claim for the return of a security deposit is dismissed.

### Emergency Repairs

The Tenant's application indicates she is seeking \$3,000.00 for the cost of emergency repairs. The Tenant clarified that her claim is not for \$3,000.00 and that she had combined her claim amounts. She clarified that she is seeking \$65.00 for the cost to have drainpipe cleared. She testified that a drainpipe was blocked, and she did not inform the Landlord and ask him to make the repair. She testified that she got her own plumber to fix the sink and remove a plastic straw.

In reply, the Landlord stated that they were never notified by the Tenant about an issue with plumbing or the sink. The Landlord stated that the Tenants receipt indicates the issue arose months after the Tenant moved in and that and there was no issue with the sink at the start of the tenancy.

### Compensation for Loss of Quiet Enjoyment

The Tenant has applied for compensation of \$3,000.00 due to a loss of quiet enjoyment of her tenancy.

The Tenant stated she was delayed moving into the rental unit due to a handyman who was making repairs to the rental unit due to damage caused by a previous occupant. She stated that the Landlord informed her that there was minor work to be done to the unit. She testified that the Landlord was also having renovation / construction to the first and second floor of the house. The Tenant provided video recordings of the noise from construction.

The Tenant stated that there was constant hammering and drilling that was disturbing her. She testified that her water and electricity was cut off on more than two or three times without notice.

The Tenant testified that the construction continued throughout her tenancy and was ongoing five days per week from about 7:30 am until 4:00 or 5:00 pm in the afternoon. She stated that the dust was affecting her asthma. She stated that she had to get out and spend time at school because of the noise.

In reply, the Landlord testified that renovations were being done to the Landlords side of the house. She testified that the work was performed in compliance with city bylaws. The Landlord stated that the Tenants video files are short which indicates the noise was

of short duration and pointed out that the videos were all taken on the same date; January 31, 2018.

The Landlord Mr. G.A. testified that the construction took approximately 30 days and that noisy construction was limited to 6-7 days in total.

The Landlord Ms. R.A. stated that the Tenant never communicated any concern to them about noise during the tenancy. She stated that nothing was mentioned in person, or in writing. The Landlord stated that there were occasions where they knocked on the Tenant's door to inform her that there would be noise; but the Tenant was not home.

The Landlord stated that there was also a new home being built next door to the rental unit during this time period.

The Landlord stated that they had to cut the power to the unit once and they cut the water to the unit twice.

In reply, the Tenant testified that she did notify the Landlord about a concern with noise in person and on the phone. She stated that she began to record her video files about six weeks into the tenancy.

At 90 minutes into the hearing the Tenant was asked if all her claims had been heard. She asked if we needed to go through all of her documentary evidence. The parties were informed that all the evidence from the Tenant and Landlord would be reviewed prior to a Decision being made. The Tenant agreed that her claims had been heard and the hearing ended.

### Analysis

Section 28 of the Act, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*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.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment **even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*** [my emphasis]

The Residential Tenancy Branch Policy Guideline #16 Compensation for Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

*Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:*

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

[my emphasis]

*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.*

Section 33 of the Act provides that "emergency repairs" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

Section 33 (3) of the Act provides that a tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed.
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs.

(4) A landlord may take over completion of an emergency repair at any time.

Based on the above, the testimony and evidence of the Landlord and Tenant, and on a balance of probabilities, I find as follows:

#### Compensation for Moving and Receiving a Notice to End Tenancy

The Tenant's claim to be compensated for moving and storage costs is dismissed without leave to reapply.

I find that the Tenant cancelled the hearing to dispute the notice to end tenancy for Landlords use of property and chose to accept the notice and move out of the rental unit. There is insufficient evidence from the Tenant that the tenancy ended due to a breach of the Act on the part of the Landlord.

#### Compensation for Loss of Quiet Enjoyment

The Tenant is entitled to freedom from unreasonable disturbance. The policy guideline on Quiet Enjoyment provides that a breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

The Guideline also provides:

*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.*

*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.*

*A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.*

I have considered whether or not there was substantial interference with the ordinary and lawful enjoyment of the property and whether the disturbances were unreasonable.

The Tenant submitted that the construction was ongoing for the entire duration of her tenancy and that it occurred five days per week. She stated that she was affected by noise and dust and left the unit on occasion to get away from this. She stated that she mentioned the noise to the Landlord in person.

The Landlord submitted that the construction took place over 30 days and was only noisy for 6 or 7 days in total. The Landlord acknowledges that the electricity to the Tenant's unit was cut once and the water was cut twice. The Landlord submitted that the Tenant never communicated to them a concern about noise in person or in writing.

I have reviewed the Tenant's video recording evidence and I noted the dates that the media was created. I find that the majority of the Tenant's videos showing noise were recorded in a three-day period of January 31, 2019 to February 2, 2019. I note there was one video of noise recorded on January 11, 2019. On another video I note that the time showing on a clock was 9:00 am.

I find that there is evidence from the Tenant establishing that there was construction noise at the residential property for approximately a one-month period. This is consistent with the Landlord's testimony that the construction took over a 30-day period.

I accept the Tenant's testimony that her quiet enjoyment was affected by construction noise. I find that the construction noise was present for approximately one month. I find that the noise was substantial and when combined it was not just a temporary inconvenience.

I find that the Landlord has a right and responsibility to maintain the premises and this must be balanced with the Tenant's right of quiet enjoyment. I find that the Tenant is entitled to some compensation for her loss of quiet enjoyment.

I find that the amount of compensation claimed by the Tenant is inflated. While I accept that the Tenant was disturbed by some construction noise, the Tenant otherwise had full use of the rental unit to cook, bathe, sleep etc. I find that a reasonable amount of compensation is a percentage of the rent that is paid for a one-month period.

After considering the evidence and testimony before me I award the Tenant compensation in the amount of \$300.00 which is 30% of the monthly rent.

### Emergency Repairs

I find that the Tenant did not report the sink issue to the Landlord and give the Landlord an opportunity to repair it. The Tenant did not follow the requirements set out in section 33 of the Act with respect to an emergency repair. The Tenant is not entitled to recover the amount of \$65.00 from the Landlord.

The Tenant's claim for \$65.00 is dismissed without leave to reapply.

I grant the Tenant a monetary order in the amount of \$300.00. For enforcement, the monetary order must be served on the Landlord and may be enforced in the Provincial Court.

### Conclusion

The Tenant was partially successful with a claim for compensation due to a loss of quiet enjoyment.

The Tenant is granted a monetary order in the amount of \$300.00.

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: July 14, 2021

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Residential Tenancy Branch