



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, PSF, FFT

### Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution filed under the *Residential Tenancy Act* (the "*Act*") made on May 6, 2021. The Tenants applied for a monetary order for compensation under the *Act*, for an order that the Landlords provide services or facilities required by the tenancy agreement or law, and to recover the filing fee paid for the application. The matter was set for a conference call.

Both the Tenants, as well as both the Landlords and the Landlord's Advocate (the "Landlords") attended the hearing and were each affirmed to be truthful in their testimony. Both parties were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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

### Preliminary Matters

At the outset of these proceedings, it was noted that the Tenants had applied for two issues that were not related to one another. As these matters do not relate to one another, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply the Tenants' claim for an order that the Landlord provide services or facilities required by the tenancy agreement or law.

I will proceed with this hearing on the Tenants' claim for a monetary order for compensation under the *Act* and to recover the filing fee paid for the application.

#### Issues to be Decided

- Are the Tenants entitled to a monetary award for compensation pursuant to section 67 of the *Act*?
- Are the Tenants entitled to recover the filing fee paid of the application?

#### Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The tenancy agreement records that this tenancy began on July 1, 2019, as a month-to-month tenancy. That rent in the amount of \$2,500.00 is to be paid by the first day of each month, and the Landlords collected a \$1,250.00 security deposit at the outset of this tenancy. The Tenants submitted a copy of the tenancy agreement into documentary evidence.

The Tenants testified that they are requesting a 50% rent reduction as compensation due to a loss of quiet enjoyment during their tenancy. The Tenants testified that the Landlord conducted major renovations to the lower unit of the rental property between March 1, 2021, to June 22, 2021, and that the noise, dust, and restricted use of the property during the renovations caused them a serious loss of quiet enjoyment of the rental property.

The Tenants testified that the Landlord conducted the renovation/construction work themselves, working Monday through Sunday, anywhere from 7:30 am through 7pm

each day. The Tenants testified that the work involved hammering, sawing, cutting stone tile, which created an extreme amount of noise and dust. The Tenants submitted 97 audio and video recordings of the construction work into documentary evidence.

The Tenants also testified that the renovation/construction work removed a security door, tore up steps, and limited their access to the laundry room and their private balcony. The Tenants submitted 23 pictures of the construction work into documentary evidence.

The Tenant testified that when they complained about the disturbance and their loss of quiet enjoyment to the Landlord, the Landlord told them to move out.

Additionally, the Tenants testified that the disturbance and loss of quiet enjoyment due to the renovation/construction work was intensified due to the Covid-19 pandemic. As their entire family was either working or conducting their school studies from home during the period of construction, and the community was on lockdown due to the pandemic, which prevented them from going to another location, i.e., library, coffee shop or office, to work or study.

The Landlord testified that they did make major renovations to the rental unit but that the renovations were ordered to be completed by the city and that the Tenants should have moved out if they did not like the noise and dust. The Landlord testified that the renovations started on March 1, 2021 and ended on June 15, 2021, and that they do not believe the Tenants are entitled to compensation.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

The Tenants are claiming for a 50% rent reduction as compensation due to the loss of quiet enjoyment of the rental unit during their tenancy. Section 28 of the *Act* establishes a tenant's right to quiet enjoyment and reads as follows:

#### ***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 determining if there has been a breach of the Tenants' right to quiet enjoyment, I must consider the guidance found in the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

**BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT**

"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"

I accept the verbal testimony of the Landlord, and they did conduct major renovations on the rental property and that these renovations did cause a great deal of noise, dust and disruption to the rental property. I find that this was a breached section 28(b,c) of the Act; these major renovations did interfere with the Tenants lawful right to the quiet enjoyment of the premises. Consequently, I find that the Landlord was in breach of section 28 of the Act, during this tenancy and that the Tenants did suffer a loss of quiet enjoyment due to the Landlord's breach.

In determining the amount of compensation to be awarded to the Tenants, due to the Landlord's breach, I must consider the Residential Tenancy Policy Guideline #6 Entitlement to Quiet Enjoyment, which states the following:

**Compensation for Damage or Loss**

"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 accept the agreed-upon testimony of both parties that the Landlord did conduct major renovations to the rental property during this rental property that started on March 1, 2021. However, I find that the parties, to this dispute offered conflicting verbal testimony regarding the date that these renovations were completed. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that would be the Tenants.

I have reviewed the documentary and digital evidence submitted by the Tenants, and I find that there is insufficient evidence before me to prove that the construction on the rental property went on until June 22, 2021.

Additionally, after reviewing the video and audio files submitted into documentary evidence by the Tenants, I find that the noise and dust created during the construction to have been a serious deprivation of the Tenants’ right to the enjoyment of the rental unit. Also, after reviewing the pictures submitted into documentary evidence by the Tenants, I find that the construction activities of the Landlord, including the placement of tools and construction equipment caused the use of the laundry room and balcony be to restrict and that this was a breach of the Tenants’ right to the exclusive possession of the rental unit.

Due to the severity of the noise, the dust, and the disruption to the use of the rental property during the construction period of this tenancy, I find it appropriate to award the Tenants the return of half (50%) of all the rent paid for this tenancy. in the amount of \$4,684.93; for the period between March 1, 2021, to June 22, 2021; a total of 114 days at the rate of \$41.10 per day.

Monthly Rent	\$2,500.00
Yearly Rent	\$30,000.00
Per Diem	\$82.19
50% Rent Reduction Per Diem	\$41.10
Days Refunded	114
<b>Awarded to TT</b>	<b>\$4,684.93</b>

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application, I find that the Tenants are entitled to recover the \$100.00 filing fee paid for this application.

Overall, the Tenants' are granted permission to withhold \$4,784.93 from their rent for this tenancy, consisting of \$4,684.93 in a retro-active rent reduction and \$100.00 in the recovery of their filing fee for their application.

### Conclusion

Pursuant to section 67 of the *Act*, I grant the Tenants permission to withhold \$4,784.93 from their rent for this tenancy, in full satisfaction of the awarded amounts contained in this decision.

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 22, 2021

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Residential Tenancy Branch