



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

This hearing dealt with a tenant's monetary claim against the landlord for loss of quiet enjoyment.

Both the landlord and the tenants appeared for the originally scheduled hearing date of August 24, 2021. The parties were affirmed, and the parties were ordered to not record the proceeding. An Interim Decision was issued on August 25, 2021 and should be read in conjunction with this final Decision.

As seen in the Interim Decision, the hearing time of August 24, 2021 expired before the landlord had the opportunity to respond to the tenant's submissions. It was expected that at the reconvened hearing of December 14, 2021 the landlord would respond to the tenant's submissions; however, on December 14, 2021 the landlord did not appear for the hearing. The teleconference call was left open for approximately 15 minutes to give the landlord the opportunity to appear, but he did not and the teleconference call was ended.

As seen in the Interim Decision, the landlord had not provided any evidence prior to the commencement of the hearing and he confirmed he intended to provide his position orally during the hearing. Since the landlord did not appear for the reconvened hearing to provide his evidence or submissions, orally, this decision is made based on the tenant's submissions and evidence only.

### Issue(s) to be Decided

1. Have the tenants established an entitlement to compensation from the landlord for loss of quiet enjoyment in the amount of \$10,000.00, as claimed?
2. Award of the filing fee.

### Background and Evidence

The tenancy started on November 15, 2018 and rent was set at \$2000.00 payable on the first day of every month. The rent increased to \$2050.00 starting February 1, 2020. The tenancy ended on January 31, 2021.

The tenants seek compensation of \$10,000.00 from the landlord for loss of quiet enjoyment for the 23 month period of March 2019 through January 2021. The sum of \$10,000.00 amounts to compensation of approximately \$434.00 per month which is a rent abatement of approximately 22% for this time period.

The rental unit is a townhouse located in a strata development. The townhouses have garages that are accessed by way of a common driveway and living spaces is located above the garages. The landlord is the owner of the rental unit but not of unit next to the rental unit.

The tenants submit that in March 2019 a new tenant moved in next door to them and for the duration of their tenancy they suffered loss of quiet enjoyment due to excessively loud noise, smoke from marijuana smoking and exhaust from vehicles, and assault and intimidation by their neighbour.

Excessive noise came in the form of their neighbour revving engines in the garage; running a chainsaw; riding motorbikes and an All Terrain Vehicle (ATV) and driving remote control cars on the common driveway; and, partying and fighting with his girlfriends.

The neighbour would smoke marijuana on the common driveway and the smoke would waft up to the tenant's unit. Also, the tenant revving engines or motors in his garage for lengthy periods of time would result in excessive exhaust wafting up to their rental unit.

The neighbour also acted in an intimidating manner by yelling and cursing at the tenant's children when they played on the common driveway; the neighbour told the female tenant to "go suck a dick" in front of the children; and, would call the male tenant an "asshole", idiot and make gestures shaped like a gun toward the male tenant.

In February 2020, the neighbour also "sucker punched" the male tenant resulting in the police arresting the neighbour. The following month, the neighbour rushed at the male

tenant's vehicle while he was driving from the property in an intimidating manner as it looked as though the neighbour was going to throw a punch at the tenant.

The tenants submit they contacted the City about the excessively loud noise but learned that since the disturbance was on a strata property the strata council should deal with the matter. The tenants submit that they contacted the strata council's property management company but learned that complaints should come from the owner/landlord.

The tenants submit they reported the issues they were experiencing with the neighbour to their landlord on numerous occasions by way of email and text and sent him videos to demonstrate their concerns. The tenants were of the view the landlord's responses were inadequate. On some occasions, the landlord was of the view the tenants were over-reacting but the tenants acknowledged the landlord sent the strata counsel messages a handful of times; however, the tenants were of the view the messages sent to the strata council were too "casual" and infrequent. The tenants acknowledged that the strata corporation ended up terminating the property management company in response to the landlord's complaints; however, the tenants are of the view the landlord could have done more to protect their quiet enjoyment by being more assertive and attending strata council meetings. Also, some of their complaints to the landlord resulted in no response from the landlord.

The tenants submitted that they were disturbed by the excessive noise approximately 2 hours a day, nearly every day. However, the tenants acknowledged that not every situation was reported to the landlord, including the time the neighbour rushed at the tenant's vehicle and looked as though he was going to punch the tenant.

The tenants explained that they thought the landlord was going to address the situation and they were also busy working, going to school and raising kids.

In support of their position, the tenants provided: a written statement of their experiences; several video clips to demonstrate the noise and activity of their neighbour including a description of the videos on a Digital Evidence Details worksheet; articles showing the neighbour was involved in nuisance proceedings in 2010 and 2011 at a different property; and proof these materials were delivered to the landlord.

I did not receive any responses to the above described submissions and evidence from the landlord.

## Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. Awards for compensation are provided in section 7 and 67 of the Act, and, as provided in Residential Tenancy Policy Guideline 16: *Compensation for Damage or Loss* it is before me to consider whether:

- a party to the tenancy agreement violated the Act, regulation or tenancy agreement;
- the violation resulted in damages or loss for the party making the claim;
- the party who suffered the damages or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss did whatever was reasonable to minimize that damage or loss.

Every tenant is entitled to quiet enjoyment under section 28 of the Act. Residential Tenancy Policy Guideline 28: *Entitlement to Quiet Enjoyment* provides policy statements and information with respect to the entitlement to quiet enjoyment. Below, I have provided excerpts from policy guideline 28.

### **A. LEGISLATIVE FRAMEWORK**

Under section 28 of the Residential Tenancy Act (RTA) ... a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

### **B. 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.

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.

### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA ... (see Policy Guideline 16).

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.

[My emphasis underlined]

I have reviewed the videos provided by the tenants and I find the video evidence to be consistent with the tenant's testimony. I see and hear several instances where I can hear revving engines coming from the neighbour's garage; the neighbour smoking in the common driveway; the neighbour driving an ATV and running noisy remote control cars

in the common driveway; and, what appears to be the neighbour rushing toward the tenant's driver side window while leaving the property. Based on the tenant's written statement, oral testimony and videos, I accept the tenant's unopposed evidence that they suffered loss of quiet enjoyment from excessive noise occurring very frequently from revving engines in the neighbour's garage and running of an ATV and remote controlled cars on the common driveway; and, from the marijuana smoke and engine exhaust often. I further accept the unopposed evidence that the source of the noise and smoke is from the neighbour in the unit beside the rental unit. I was also provided a video of the neighbour being arrested and I accept the tenant's unopposed submissions that this followed an assault upon the tenant by the neighbour. Therefore, I accept the tenants were suffering from unreasonable disturbance by significant interference of using the common areas (the assault and threat of assault) and the frequent and on-going noise and smoke experienced within their unit that was the result of the actions of their neighbour.

However, I also saw videos that I find do not rise to the level of unreasonable disturbance. For example: the tenants provided videos of a diesel pick up truck pulling into the common driveway and leaving the common driveway and a Harley Davidson motorcycle leaving the common driveway. The noise from these vehicles is loud but there is nothing to suggest the vehicles are emitting otherwise illegal levels of noise and in looking at the construction of these townhouses with a narrow common driveway running down the middle of two rows of townhouses, I am of the view that noise echoes and may be louder than in other types of configurations. Therefore, I accept that, at times, the tenants were overly sensitive given the characteristics of the townhouse development.

The neighbour responsible for causing the disturbances was not the landlord or the landlord's tenant. Rather, I heard the neighbour was a tenant of a different owner. The landlord cannot take direct action against the neighbour or the owner next door. Rather, the landlord would be expected to report the incidents to the strata council and request the strata council take action against the other owner. A strata corporation would have the authority to notify the other owner of the complaints received about his/her unit and if that owner fails to take action to stop their tenant's offending behaviour the strata corporation's remedy would include fining the owner to motivate the owner to take action.

In this case, I accept the unopposed evidence before me that the tenants notified their landlord of many of the disturbances they were experienced as a result of the actions of their neighbour. I did hear from the tenant that the landlord did communicate to the

strata council, or its property management company, on a few occasions and as a result the property management corporation was terminated. Accordingly, I find the landlord did not sit idly by and the issue becomes did the parties do whatever was reasonable to protect the tenant's right to quiet enjoyment and mitigate losses.

I am of the view that both the landlord and the tenants could have done more to protect the tenant's right to quiet enjoyment and mitigate the loss of quiet enjoyment. The tenants submitted the landlord could have complained to the strata corporation more frequently and assertively, including attending strata meetings. Certainly, based on what is before me, I accept the landlord could have and should have done more to protect his tenant's right to quiet enjoyment. However, I also find the tenants could have done more to seek remedy if they were of the view the landlord was not taking sufficient action, including filing an Application for Dispute Resolution seeking orders for compliance against the landlord rather than waiting to file a monetary claim seeking compensation for a 23 month period after their tenancy ended. Had both parties taken more action the disturbances may have ended sooner than it did by way of the subject tenancy ending, or perhaps less significant.

In light of the above, I find the landlord failed to do whatever was reasonable to protect the tenant's quiet enjoyment but I find the tenants also failed to mitigate their losses. Therefore, I make an award to the tenants with this decision that recognizes the failings of both parties by limiting the tenants' award to compensation for three months.

I find the tenant's request for compensation of \$434.00 per month, which is approximately 22% of their monthly rent, to be within reason for loss of quiet enjoyment; however, I am of the view that if a tenant is experiencing nearly daily disturbance and they are of the view the landlord is not taking sufficient action, the tenant would file an Application for Dispute Resolution seeking remedy against the landlord in a timely manner in an effort to bring an end to the disturbances. I am of the view that after a few months without improvement, the tenants would proceed to take such action against the landlord which is why I limit their award to three months, or \$1302.00 [ $\$434.00 \times 3$  months].

I further award the tenants recovery of the \$100.00 filing fee they paid for their application.

In keeping with the above, I provide the tenants with a Monetary Order in the sum of \$1402.00 to serve and enforce upon the landlord.

Conclusion

The tenants were partially successful in their claim against the landlord and the tenants are awarded \$1302.00 plus recovery of the \$100.00 filing fee. The tenants are provided a Monetary Order in the sum of \$1402.00 to serve and enforce upon the landlord.

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: December 15, 2021

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Residential Tenancy Branch