



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDCT, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 19, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- For compensation for monetary loss or other money owed
- To recover the filing fee

The Tenant appeared at the hearing. Nobody appeared at the hearing for the Landlord. I explained the hearing process to the Tenant. I told the Tenant they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenant provided affirmed testimony.

The Tenant only submitted the Notice as evidence. The Landlord did not submit evidence. I addressed service of the hearing package. The Tenant testified that they served the hearing package on the Landlord in person in October of 2021.

Based on the undisputed testimony of the Tenant, I am satisfied the Landlord was served with the hearing package in accordance with section 89(1)(a) of the *Residential Tenancy Act* (the “Act”) in October of 2021. Given the hearing package was served four months prior to the hearing, I find the timing of service sufficient.

The Tenant advised that they moved out of the rental unit December 15, 2021. Given this, the Tenant withdrew the dispute of the Notice and request for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. The Tenant proceeded with their requests for compensation for monetary loss or other money owed and to recover the filing fee.

The Tenant advised that they wanted more time to submit evidence for the Application. I considered rule 7.9 of the Rules in relation to adjournments which states:

#### 7.9 Criteria for granting an adjournment

Without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- the oral or written submissions of the parties;
- the likelihood of the adjournment resulting in a resolution;
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- the possible prejudice to each party

I declined to adjourn the matter because this is the Tenant's Application which was filed four months prior to the hearing and therefore the Tenant had ample time to prepare for the hearing and to submit evidence. I told the Tenant their options were to proceed with the hearing or withdraw the request for compensation for monetary loss or other money owed and re-file this when they are ready to do so. The Tenant chose to proceed with the hearing.

Given I was satisfied of service of the hearing package, I proceeded with the hearing in the absence of the Landlord. The Tenant was given an opportunity to present relevant evidence and make relevant submissions. I have considered all oral testimony of the Tenant. I have only referred to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Tenant entitled to compensation for monetary loss or other money owed?
2. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

The Tenant testified as follows. There was a written tenancy agreement between the parties. The tenancy started October 01, 2021, and was a month-to-month tenancy. Rent was \$1,475.00 plus utilities due on the first day of each month. The Tenant paid a security deposit equal to half a month's rent.

The Tenant seeks \$5,000.00 in compensation, the basis for which is outlined in the Application. Based on the statements in the Application, I find the Tenant is seeking compensation for loss of quiet enjoyment.

The Tenant outlined the issues they dealt with during the tenancy as follows.

There was an extensive interview process to get the rental unit. The Landlord was aware of how much the Tenant worked and how late the Tenant worked when the Landlord offered the Tenant the rental unit. The Tenant found out days prior to the tenancy starting that the Landlord lived underneath the rental unit and the Tenant voiced their concerns about this. The Landlord assured the Tenant it would be fine.

The Tenant moved into the rental unit October 01, 2021. On October 03, 2021, the Landlord texted the Tenant at 10:30 p.m. about the Tenant being up. The Tenant told the Landlord they were just hanging clothes up given they had just moved in and the Landlord told the Tenant to go to bed because it was late. From this point forward, the Landlord continually texted the Tenant calling the Tenant inappropriate names and stating that "normal people" go to bed at 10:00 p.m. or 11:00 p.m. At times, the Landlord would come and bang on the door of the rental unit at 2:00 a.m. yelling, calling the Tenant names and telling the Tenant to go to bed when the Tenant was simply by themselves watching television on a very low volume.

The Tenant tried to stop noise transfer from the rental unit to the Landlord's unit by placing blankets on the floor; however, the rental unit was not insulated properly such

that the Landlord would text the Tenant about noise if the Tenant accidentally dropped a small item on the floor.

On October 10, 2021, the Landlord shut the electricity to the rental unit off which resulted in the Tenant not having heat in the rental unit. As well, the Landlord sent a food delivery person away because they arrived after 10:00 p.m.

On October 11, 2021, the Landlord issued the Tenant an eviction notice. The Tenant disputed the notice and in response the Landlord's husband attended the rental unit, threatened the Tenant's life, told the Tenant "don't make me do something crazy to you" and swore at the Tenant. The Tenant went to the police about the incident and stayed in a hotel for the night. Police told the Tenant they told the Landlord's husband not to interact with the Tenant.

When the Tenant returned to the rental unit, they asked the Landlord to clarify quiet time and the Landlord's husband told the Tenant they could not shower, run water, cook or walk around after 10:00 p.m. The Tenant worked from 2:00 p.m. to 10:00 p.m. which the Landlord knew. The Tenant only got home around 10:00 p.m. or 11:00 p.m. The Tenant tried to be as quiet as they could but they could not even flush the toilet without the Landlord getting angry.

Given the issues between the parties, the Landlord's husband started opening and closing the garage door for hours at a time and also started welding in the morning. Further, the Landlord's husband would glare and stare at the Tenant out the window.

The Tenant had to start leaving work early so they could get home and get things done before 10:00 p.m. which resulted in loss of wages and tips. The Tenant could not afford to move out of the rental unit. The Tenant's work put the Tenant up in a hotel for three days in October; however, this was not an option long-term financially.

When the Tenant returned to the rental unit, the Landlord and Landlord's husband started banging on the door and swearing at the Tenant about rent. The Landlord and Landlord's husband attended the rental unit at 2:00 a.m. and screamed at the Tenant through the glass door. The situation became volatile. The Tenant was afraid to make any noise in the rental unit. The Tenant slept in their car a few times. The Tenant was not sleeping because they were scared.

At one point, the Tenant took their dog out at 4:00 a.m. and the Landlord texted the Tenant asking what they were doing when the Landlord was not even home at the time.

The Tenant looked for a new place to live constantly; however, finding one was difficult. The Tenant was going to commit suicide and felt they were trapped in a nightmare and did not know what to do.

The Tenant submitted that they were not partying or making excessive noise in the rental unit during the tenancy and that they were simply reading, watching television, going to the washroom or tidying up and that the Landlord overreacted to the noise.

### Analysis

Section 7 of the *Act* states:

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

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

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Section 28 of the *Act* states:

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.

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

#### 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...

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 and section 60 of the MHPTA (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.

Pursuant to rule 6.6 of the Rules, it is the Tenant as applicant who has the onus to prove the claim. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

I accept the facts as stated by the Tenant because they are undisputed. Further, I did not have concerns about the reliability or credibility of the Tenant's testimony during the hearing.

I accept that the Landlord and Landlord's husband breached section 28 of the *Act* and the Tenant's right to quiet enjoyment. I accept the undisputed position of the Tenant that the facts outlined amount to a breach of section 28 of the *Act*. I accept the undisputed testimony of the Tenant that the Landlord and Landlord's husband's reaction to any noise coming from the rental unit was out of proportion to the level of noise. I also accept that the Tenant has outlined sufficient facts to support a breach of section 28 of the *Act*, in particular, the facts around the Landlord calling the Tenant inappropriate names, banging on the rental unit door, yelling, shutting off the electricity to the rental unit as well as the Landlord's husband threatening the Tenant's life such that police got involved and making excessive noise in the morning. I am satisfied based on the undisputed testimony of the Tenant that the Landlord and Landlord's husband caused substantial interference with the Tenant's ordinary and lawful enjoyment of the rental unit. Based on the Tenant's undisputed testimony, I accept that the disturbances were frequent, ongoing and unreasonable in the circumstances.

I accept the undisputed position of the Tenant that they suffered loss as a result of the Landlord and Landlord's husband breaching section 28 of the *Act*.

I accept the undisputed position of the Tenant that the amount or value of the loss suffered is \$5,000.00. The Application shows the amount claimed is based on loss of quiet enjoyment of the rental unit, moving costs and loss of enjoyment of life. The Tenant also testified about financial losses such as having to stay in a hotel for a night after going to the police about the Landlord's husband's behaviour as well as loss of wages and tips due to reduced work hours. I accept the undisputed testimony of the Tenant about the seriousness of the situation and note the police involvement as well as the stated feelings of the Tenant such as being afraid to make noise, being scared, thinking about committing suicide and feeling like they were trapped in a nightmare. The Tenant also testified that the issues with the Landlord were continuous and therefore I accept that they went on for the duration of the tenancy which was two and a half months.

I am satisfied based on the undisputed testimony of the Tenant that they mitigated their loss by making the Landlord aware of their work schedule, trying to reduce noise transfer by placing blankets on the floor of the rental unit, involving police when necessary, trying to be as quiet as possible in the rental unit, leaving work earlier to avoid the issues raised and looking to move out of the rental unit.

Given the above, I accept the undisputed position of the Tenant that they are entitled to \$5,000.00 in compensation for loss of quiet enjoyment and I award the Tenant this amount pursuant to section 67 of the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant is awarded \$5,100.00 and I issue the Tenant a Monetary Order in this amount.

### Conclusion

The Tenant is awarded \$5,100.00 and is issued a Monetary Order in this amount. This Order must be served on the Landlord. If the Landlord fails to comply with this Order, it may be filed in the Small Claims division of the Provincial Court and enforced as an order 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 *Act*.

Dated: March 23, 2022

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Residential Tenancy Branch