



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      RR, MNDCT, RP, FFT

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on December 13, 2021 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order granting a rent reduction;
- an order for regular repairs;
- a monetary order for damage or compensation; and
- an order granting recovery of the filing fee.

The original hearing was held on March 28, 2022 and did not complete in time, therefore, was adjourned and reconvened on July 25, 2022. At the start of the original hearing, the Landlord's Agent confirmed receipt of the Tenants' Application and documentary evidence. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 of the *Act*. The Landlord's Agent confirmed that the Landlord did not submit any documentary evidence in response to the Application.

### Preliminary Matters

The Tenants had applied for an order that the Landlord conduct repairs to the elevator in the rental property. During the hearing, the Landlord's Agents agreed and stated that they have already commenced the process to complete the elevator modernization, by signing the agreement in January 2022, paying the deposit in March 2022, and that work is scheduled to commence in January 2023. The Landlord's Agents stated that the work is meant to take 14 weeks to complete. Based on this understanding, the Tenants indicated that this satisfied their claim for repairs. As such, the Tenants' claim for repairs is dismissed with leave to reapply, should the Landlord not fulfill this intent.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

#### Issue(s) to be Decided

1. Are the Tenants entitled to a rent reduction, pursuant to Section 65 of the *Act*?
2. Are the Tenants entitled to a monetary order for damage or compensation, pursuant to Section 67 of the *Act*?
3. Are the Tenants entitled to the recovery of the filing fee, pursuant to Section 72 of the *Act*?

#### Background and Evidence

The parties testified to the following; the tenancy began on August 15, 2021. The Tenants are required to pay rent in the amount of \$2,074.00 which is due on the last day of each month. The Tenants paid a security deposit in the amount of \$1,037.00 which the Landlord continues to hold.

The Tenants are seeking compensation equivalent to six months of rent in the amount of \$12,444.00, as well as a 40% rent reduction for each additional month following the initial 6 months of tenancy in relation to elevator noise they have experienced in their rental unit. The Tenants are also seeking to recover their moving costs in the amount of \$924.00.

The Tenants stated that prior to the commencement of their tenancy, the Landlord's Agent assured them that the elevator would be repaired and that the noise emitting from the elevator would be fixed within a week. Given this information, the Tenants stated that they decided to rent the unit, anticipating that the elevator noise would no longer be an issue. The Tenants stated that despite the Landlord's attempts at having the elevator repaired, it appears as though a complete elevator replacement is necessary.

The Tenants have since provided the Landlord with formal requests to repair the elevator given the impact that the elevator noise is having on their quiet enjoyment of the rental unit. The Tenants provided the formal letters sent to the Landlord in support. The Tenants stated that they maintained regular contact with the Landlord regarding the

elevator issues throughout the tenancy. The Tenants provided texts messages in support.

The Tenants stated that the elevator is located beside their rental unit. The Tenants stated that the elevator is so noisy, that they have resorted to moving their bed into the living room in order to sleep at night. The Tenants stated that they can still hear the elevator throughout their rental unit. The Tenants provided a picture and a video of their living arrangement in support.

The Tenants have provided witness letters from other occupants in the rental building, confirming their longstanding experience with the issues relating to the elevator. The Tenants also provided video files showing the noise of the elevator in the Tenants' rental unit, as well as from inside the elevator. The Tenant provided an audio recording and transcript of a conversation between the Tenants and the Landlord's Agents discussing the issues with the elevator dated December 10, 2021.

The Tenants stated that they reached out to the elevator repair company who confirmed that a replacement of the elevator is necessary, but that they require the Landlord's approval to complete the work. The Tenants provided the emails in support.

In response, the Landlord's Agents confirmed that the elevator requires replacement, and that the Landlord has commenced the process to complete the elevator modernization, by signing the agreement in January 2022, paying the deposit in March 2022, and that work is scheduled to commence in January 2023. The Landlord's Agents stated that the work is meant to take 14 weeks to complete.

The Landlord's Agents stated that the Landlord had contacting several elevator repair companies seeking quotes to replace the elevator. The Landlord's Agents stated that the Tenants delayed the process to repair the elevator, after the Tenants contacted the elevator company and made themselves the lead contact, resulting in the Landlord not receiving the quote they were anticipating.

In the meantime, the Landlord's Agent stated that they have contacted the elevator repair technician each time the elevator breaks down to repair, however, the noise from the elevator continues to be an issue.

## Analysis

Section 32 of the Act sets out the landlord's duty to repair and maintain, stating as follows:

### ***Landlord and tenant obligations to repair and maintain***

**32(1)** *A landlord must provide and maintain residential property in a state of decoration and repair that*

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.*

Section 62(3) of the Act states:

*The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

Section 26 of the Act authorises the Director to make an order that the tenant deduct rent, stating as follows:

**26 (1)** *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Section 67 authorizes the determination of the damage or loss and states:

### **Director's orders: compensation for damage or loss**

**67** *Without limiting the general authority in section 62 (3) [director's authority respecting dispute resolution proceedings], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.*

The claimant (the tenant) bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities **all** the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

*22. 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.*

[emphasis added]

*The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* states that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected and defines a breach of the entitlement to quiet enjoyment as substantial interference with the ordinary and lawful enjoyment of the premises. The Policy Guideline states that this includes situations in which the landlord has directly caused the interference, as well as situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

The Guideline states in part as follows:

*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 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.*

*[emphasis added]*

In this case, I find that it is the Landlord's responsibility to repair and maintain the rental property in accordance with Section 32 of the Act. I find that the Tenants were led to believe that the noise emitting from the elevator would be repaired prior to the commencement of the tenancy, which formed their decision to enter into the tenancy.

I find that the Landlords took action to repair the elevator, however, it became apparent that the elevator require replacement, which is a significant repair and expense. I

accept the Landlord's Agents' testimony that the Landlord has paid the deposit and that work will commence to modernize the elevator as of January 2023.

With respect to the Tenant's claim for loss of quiet enjoyment, I find that the Tenants have provided insufficient evidence to demonstrate that they are entitled to full compensation of rent for the first six months, nor have they demonstrated an entitlement to 40% rent reduction thereafter. I find that the Tenants have not lost use of any portion of their rental unit. While the noise of the elevator may impact them most at night while sleeping, I find that they still have use of their bedroom and all other areas of their rental unit.

I find that the noise emitting from the elevator is frequent and ongoing which is contrary to what the Tenant were led to believe would take place at the time they entered into their tenancy. I find this to be a breach of the Tenants quiet enjoyment.

I find in this case that compensation equivalent to 10% of the Tenants rent (\$2,074.00 x .10 = **\$207.40**) is appropriate given the circumstances. As the Tenants only paid for half a month of rent from August 15 to 31, 2021, they are only entitled to half the compensation for that month (\$207.40 / 2 = \$103.70). The Tenants are entitled to \$207.40 for each of the following months in the tenancy as follows;

August 2021 = \$103.70  
September 2021 = \$207.40  
October 2021 = \$207.40  
November 2021 = \$207.40  
December 2021 = \$207.40  
January 2022 = \$207.40  
February 2022 = \$207.40  
March 2022 = \$207.40  
April 2022 = \$207.40  
May 2022 = \$207.40  
June 2022 = \$207.40  
July 2022 = \$207.40  
August 2022 = \$207.40

The amount of compensation currently due to the Tenants amounts to **\$2,592.50** which represents 10% of the monthly rent from the start of the tenancy on August 15, 2021 up to and including August 2022. As the Tenants were successful with their Application, I find that they are entitled to the return of the **\$100.00** filing fee. The Tenants have been provided a monetary order in the amount of \$2,692.50.

Furthermore, I order that the Tenants are permitted to deduct 10% of the monthly rent up until the elevator has completed its modernization.

With respect to the Tenant's claim for monetary compensation relating to moving costs, I decline to award this amount given the Landlord has commenced to process of modernization, and the Tenants are being compensated for their loss of quiet enjoyment up until the elevator's modernization has been completed. I therefore dismiss this claim without leave to reapply.

With respect to the cost associated with the elevator modernization, the Landlord may wish to consult Section 23 of the Residential Tenancy Regulations for Additional rent increase other than for eligible capital expenditures.

### Conclusion

The Tenants have provided sufficient evidence to demonstrate that they have suffered a loss of quiet enjoyment. The Tenants are provided with a monetary order in the amount of \$2,692.50 for compensation equivalent to 10% of the monthly rent from August 15, 2021 up to and including August 2022 and for the return of the filing fee. The Tenants are permitted to deduct 10% of their monthly rent up until the time that the elevator has been modernized.

Although this decision has been rendered more than 30 days after the conclusion of the proceedings contrary to section 77(1)(d) of the Act, I note that section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected, if a decision is given after the 30 day period in subsection (1)(d).

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: August 25, 2022

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Residential Tenancy Branch