



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TRIBE MANAGEMENT INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, FFT

### Introduction

On January 10, 2022, the Tenant applied for a Dispute Resolution proceeding seeking a Monetary Order for compensation pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with M.G. attending as her advocate. C.V. and M.W. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

M.G. advised that the Landlord was served the Notice of Hearing package by registered mail on January 21, 2022. As well, the Tenant’s evidence was served to the Landlord by registered mail on May 24, 2022. C.V. advised that she only received these documents last week as the former property manager left the company. However, she confirmed that she had reviewed these documents and was prepared to respond. As such, I am satisfied that the Landlord was sufficiently served the Tenant’s Notice of Hearing and evidence package. Consequently, the Tenant’s evidence will be accepted and considered when rendering this Decision.

In addition, C.V. stated that the Landlord did not submit any evidence for consideration on this file.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

- Is the Tenant entitled to a Monetary Order for compensation?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on September 27, 2021, that rent was currently established at an amount of \$950.00 per month, and that it was due on the first day of each month. A security deposit of \$475.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

M.G. advised that the Tenant is seeking compensation in the amount of **\$1,900.00** for a loss of quiet enjoyment due to construction related disturbances. While the Tenant was notified that there would be a renovation conducted in the building, she was not notified that there would be a workshop set up directly above the rental unit. Starting on November 10, 2021, she would experience loud construction noise directly above her, on a daily basis. She submitted her first written complaint to the Landlord's online system on November 21, 2021, but received no response, so this was sent to the strata. On December 2, 2021, another complaint was sent to an agent of the Landlord, and this was forwarded to the Landlord for review. He cited the documentary evidence submitted to corroborate at least three instances that the Tenant communicated this problem to the Landlord. However, there was no response from the Landlord, there was no discussion regarding the nature of the construction noise, and there was no willingness to negotiate any compromise or solution.

Even though the building's quiet hours were established from 10 PM to 9 AM, the Tenant was woken up by construction noise every day before 8 AM. He submitted that this situation is unique because the workshop is directly above the rental unit and impacts the Tenant the most. He directed me to pictures submitted as documentary evidence to corroborate the extent of the construction project.

He referenced emails submitted, as documentary evidence, that the Tenant wrote to document each instance and the nature of disturbance she experienced. As well, he stated that this renovation project occurred right after the Tenant moved into the rental unit. Had she known the extent of this project, she may not have chosen to move in.

The Tenant advised that the workshop was above both her bedroom and living room, and there was no insulation between the floors. She stated that on November 10, 2021, she was woken at 10 PM by a loud explosion, which turned out to be a compressor that had exploded in the workshop upstairs. She stated that she talked to the contractors upstairs, and they confirmed that they would be working exclusively in the workshop for the duration of the renovation project.

She testified that there would be the constant noise of power tools and other construction related activities coming from directly overhead, or outside, from before 8 AM all the way to 5 PM, every weekday. As she was on sick leave, she was home for the entire time. Even if she were working, it would be likely that she would have been working from home, so she would have still experienced this noise. She stated that the building did not have elevators, so equipment would be loaded by a crane, directly in front of her balcony. In addition, there would be the noise of the construction vehicle's engines constantly loading and unloading.

She submitted that the Landlord was not interested in talking to her about her concerns, and that the property manager told her that there were no other available units to move to. She referenced the pictures submitted to support her claims of loss.

C.V. referred to the Tenant's documentary evidence where the Tenant acknowledged that the first instance of a disturbance occurred on November 10, 2021, and she noted that there were no complaints from the Tenant before this date. She testified that the construction related noise was not frivolous, but necessary due to the need to upgrade the building. She stated that the building envelope and membrane replacement could not be avoided because the owner was obligated to make these repairs. However, this project was delayed due to COVID.

She referenced the Tenant's Statutory Declaration where the Tenant advised that the noise disturbances were "on and off". As well, she indicated that the loud explosion overnight was a one-time incident on November 10, 2021, for which the contractors apologized. She submitted that the unit above the Tenant's was the only available unit in the building to accommodate the workshop. As well, she noted that the boom lift also carried materials in front of the two units below the Tenant's unit; however, the Landlord received no complaints from those tenants below. Finally, she noted that as per the Tenant's Statutory Declaration, the construction workers completed the project and left on December 23, 2021. Given that they only worked in the building on business days, the Tenant would have only been affected by this work for a total of 31 business days.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment and states that the Tenant is entitled to "reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29, and use of common areas for reasonable and lawful purposes, free from significant interference."

Policy guideline # 6 outlines the covenant of quiet enjoyment and states the following:

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.

Section 32 of the *Act* requires that the Landlord maintain the rental unit in a state of decoration and repair that complies with the health, safety, and housing standards required by law, and having regard to the age, character, and location of the rental unit, make it suitable for occupation by the Tenant.

Section 67 of the *Act* allows for an Arbitrator to determine the amount of compensation to be awarded to a party if a party has not complied with the *Act*.

With respect to the Tenant's claims for compensation for loss, when establishing if monetary compensation is warranted, I find it important to note that Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided."

As noted above, 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. When establishing if monetary compensation is warranted, it is up to the party claiming compensation to provide evidence to establish that compensation is owed. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?
- Did the Tenant act reasonably to minimize that damage or loss?

Regarding the Tenant's claim for compensation, there is no dispute that substantial renovations were undertaken on the property, and that the duration of this construction spanned 31 business days in order to be completed. I note that it is evident that the Landlord understands the requirement of Section 32 of the *Act* to repair and maintain the property, and I accept the Landlord's position that the renovations will benefit the tenants long term. However, the Landlord must also balance the tenants' entitlement to freedom from unreasonable disturbance.

When reviewing the totality of the evidence, there is no doubt that such an extensive construction project would inherently cause a substantial interference with the ordinary and lawful enjoyment of the premises. Given the timeline of this construction project, while not extraordinarily lengthy, I do not find that this would reasonably be considered a temporary discomfort or inconvenience, however. Rather, I find that this situation would more likely than not be considered a frequent and ongoing interference or unreasonable disturbance. Therefore, on a balance of probabilities, I accept that the Tenant's evidence carries more weight with respect to the severity and frequency of the disturbances. As well, I agree that this construction project would have affected her negatively by impacting her day-to-day life as the conditions that she was subjected to go beyond what would be considered reasonable to accept.

When establishing the amount of compensation, given the Tenant's health and condition, a majority of her time was spent in the rental unit apparently. As such, the loss that she suffered was significant as she had no respite from the ongoing disturbances. While it is understandable that some disturbances cannot be helped and are to be expected during such a renovation project, I am satisfied that the Tenant endured a loss and a reduction in the enjoyment of her rental unit due to the extent of noise associated with the construction project.

However, I find that this amount was chosen as it was conveniently equivalent to two months' rent, and there is no dispute that the construction noise did not occur every day for two straight months. In addition, claiming for a full month's rent would be equivalent to a loss of the Tenant being unable to live in the rental unit. As the Tenant continued to live in the rental unit during these disturbances, I do not find that the rental unit was completely uninhabitable. As such, I find that the suggestion of the Tenant that the loss in the value of the tenancy of 100% of the monthly rent to be excessive.

While I do not find that the Tenant has provided sufficient evidence to support that the loss she suffered was equivalent to the amount that she was seeking on her Application, based on the evidence presented before me, I am satisfied that there were some breaches of the Tenant's right to quiet enjoyment over the period of 31 business days. As such, under the circumstances, I find that a reduction of 50% of the daily rent, for the 31 days (note: November 11, 2021 was a statutory holiday) that construction occurred to be appropriate. Consequently, I issue a one-time monetary award to be calculated as follows:

$\$950.00 \times 12 \text{ months} / 365 \text{ days} = \$31.23 \text{ (daily rent)}$

$\$31.23 \times 50\% \times 31 \text{ days} = \mathbf{\$484.07}$

As the Tenant was partially successful in her claims, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application.

Pursuant to Sections 67 and 72 of the *Act*, I grant the Tenant a monetary award as follows:

**Calculation of Monetary Award Payable by the Landlord to the Tenant**

Loss of quiet enjoyment	\$484.07
Recovery of filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$584.07</b>

Conclusion

The Tenant is provided with a monetary award in the amount of **\$584.07** in satisfaction of these claims. Accordingly, the Tenant may deduct this amount from the next month's rent.

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 8, 2022

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Residential Tenancy Branch