



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDCT, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord named in the tenant's application attended the hearing.

During the course of the hearing, the tenant applied to amend the application to show that the name of the landlord is a company, and I so ordered. The frontal page of this Decision reflects that amendment. The landlord named in the tenant's application attended the hearing but did not testify or take part in the hearing. An agent also attended for the landlord company.

The tenant gave affirmed testimony, and the landlord's agent and a witness also gave affirmed testimony. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment?

- Has the tenant established that the landlord should be ordered to comply with the Act or the tenancy agreement with respect to the tenant's right to quiet enjoyment of the rental unit?

### Background and Evidence

**The tenant** testified that this tenancy began on 2016; the tenant was a roommate, and the other person was on the tenancy agreement, but he vacated and the tenant took over the lease, and the tenant still resides in the rental unit. A copy of the tenancy agreement has been provided for this hearing. Rent in the amount of \$825.00 was payable on the 1<sup>st</sup> day of each month, which was increased over time and is now \$969.00 per month effective January 1, 2023. There are no rental arrears. The landlord currently holds a security deposit in the amount of \$412.50, and no pet damage deposit was collected by the landlord. The rental unit is an apartment in a building containing 4 floors, 3 of which have apartments. None of the landlord's agents reside on the property.

The tenant further testified that the tenant has brought to the attention of the landlords since November, 2021 issues about noise and a resident above this rental unit. The tenant has attempted to work with the landlords. The resident above parties till sometimes 2:00 a.m. and police have been called. The after-hours agent of the landlord refused to attend and the tenant had to get police involved. It still happens, and videos have been provided for this hearing. On April 18 one person vomited on the tenant's balcony. The tenant tried to get it attended to, but the landlord doesn't return voice mails. The landlord's building manager (CS) said he refused to do anything and that he doesn't believe the resident in the upper unit is doing anything wrong. The resident in the upper unit is 20 years old and a big person, and the landlord's agent says that the tenant is ridiculous to complain.

The tenant brought that up to another agent of the landlord (JC) in November, 2021 after not being able to get ahold of the landlord's building manager (CS), who tried to put the responsibility on the tenant by telling the resident in the upper unit to reach out to the tenant, but he refused to work with the tenant. In December, the tenant again attempted to reach the landlord's agent (CS) and on January 17 the tenant contacted the company's main line and explained the situation to JC who said that she didn't have much information. She called the tenant again on January 24 and the tenant again explained the situation. The landlord's agent (JC) said she wasn't getting the documentation from the landlord's building manager (CS) and agreed that the stomping, parties, loud sex and parties until 2:00 a.m. was not acceptable, and she would tell CS

he would need to work with the tenant to resolve it. The tenant waited and in February when noise and parties started up again, CS refused to attend on site because the resident in the upper unit couldn't help being noisy, so he wouldn't assist.

The tenant contacted JC immediately after, who was disappointed. The tenant offered to give a recording of him refusing to help, but she didn't want that and said she would contact him (CS) directly. The tenant waited again and then called CS, who refused to help again. JC didn't get back to the tenant as promised, to ensure CS was willing to help.

The noise continued in March and April, and on April 8 the resident in the upper unit threw a party with over 10 people in attendance and police were called. Guests were vomiting alcohol on the tenant's balcony. Video and a timeline has been provided for this hearing. The tenant contacted JC again and left a voice mail. She tried to have dialogue by email, and the tenant put in written notices asking for someone to get in touch with the tenant. The last contact the tenant had with JC was in June.

The tenant served the landlord's building manager (CS) with written notice asking why no contact was made for over several months and that parties continued through August and September. He said he was delivering messages to JC as he refused to be involved any further.

The tenant has continued to gather evidence to show that the tenant has tried to resolve this. The tenant works 7 days per week and has a disability. The tenant was advised that the landlord's agents would only attend for 20 minutes and if no noise was detected the tenant's claims would be dismissed. The tenant was very frustrated and afraid that they would attempt to retaliate, using intimidating language.

The landlord's evidence provided for this hearing has information blacked out and no signatures. The landlord company has exhibited behaviour of unprofessionalism, and purposely tried to intimidate the tenant to prevent this application. They also claim that the tenant called police prior to the tenancy of the resident in the unit above, complaining about workers, trying to make it out that the tenant is a bad tenant.

The tenant has lost complete use of the balcony, and living room, and the issues still go on to this day. The landlord does not want to work with the tenant. They demand evidence and when they get it they say it's not good enough.

Another agent of the landlord (L) had a pleasant conversation with the tenant, but the tenant has not had any contact from the other agents. The tenant was astounded that it

was dealt with so quickly, but she (L) was not on site. The resident above and guests took their party elsewhere. On January 9, the tenant called her about getting a treadmill, and her wording made it sound as though the tenant was deranged. The recording provided for this hearing shows that she deferred the question to the building manager. She came to hear the noise, but by that time, and the tenant told her, that the noise had stopped. She tried to make it sound like the tenant was the bad person, but was simply trying to get the noise from upstairs resolved.

Copies of numerous emails exchanged between the landlord's agents and the tenant have been provided for this hearing, along with text messages exchanged between the tenant and the resident in the upper unit, and numerous audio recordings and video.

The tenant wants to ensure that there is no retaliation by the landlord because the tenant has filed this application. The tenant has provided a monetary claim in writing for this hearing of \$3,900.00, being 1/3 of rent, or \$300.00 per month from August, 2021 to October, 2022, and updated to claim \$5,700.00, being \$300.00 per month from August, 2021 to February, 2023.

**The landlord's agent** (CA) testified that the tenant moved in with a roommate who moved out in May, 2016 and since then the tenant has been living alone.

There have been 3 different non-resident managers and an over-arching issue that the tenant has with noise, and has complained to lots of staff and left letters. The tenant is to the point of obsession of movements and habits of others, using a microphone to record from the outside deck on a pole to record neighbour's actions. The tenant is a person who has on multiple occasions sat and recorded all noise, and on is social media account. The tenant unreasonably injects himself into lives of those around him, recording people. When he records staff and they say they don't want to be recorded, he says it's allowed whether they like it or not, which is unusual behaviour.

The landlords have attempted to take the tenant's complaints at face value, but cannot corroborate any of his complaints as being valid. On occasion the suite above has been vacant, and the tenant has refused entry to many of the landlord's staff to corroborate the noise. The landlord's agents offered to set up a test case, to see what the tenant is hearing, but the tenant refused. The tenant suggested that the landlord not rent to tall people who are heavy footed, complained about birthday parties, police and staff. There is no noise to abate, just normal living noises and no one else has complained. Two tenants above this unit have moved out because the tenant complained about them.

The tenant seeks compensation for the landlord failing to resolve his complaints by evicting others. The landlord's agents have on several occasions attempted to corroborate the noise to ensure it is a reasonable complaint but could not access the tenant's suite to hear what he complained about. One of the videos provided by the tenant shows a microphone pressed against the ceiling. The resident in the upper unit still lives there. Written statements from witnesses have been provided as evidence for this hearing. The landlord would have weak evidence to evict the resident in the upper unit. The landlord's agent disagrees that there were parties; guests are permitted, but there are no complaints from other tenants.

**The landlord's witness** (JC) testified that the witness is an assistant property manager.

The witness testified that on January 21, 2022 the witness received an email from the tenant and ongoing since then. The non-resident building manager (CS) attends at the rental complex for 2 hours per day.

The only noise complaints that the witness has ever received has been from this tenant. The witness has been to the building and has spoken to other tenants about noise, parties or unusually difficulty sleeping, and no one reported any concerns to the witness.

In February or March the witness received a call from police telling the witness that they received excessive callouts to the building and they had to attend. One complaint was about a domestic argument and about a birthday party. Those residents moved out.

Complaints from the tenant have been logged about loud parties, beer spilled over the tenant's balcony, guitar playing, singing, birthday parties, stomping, wearing shoes indoors, and most recently a recording of sexual activity. The tenant also complained that staff don't do their jobs, and has decided that it is the job of the landlord's agents to respond to his complaints 24 hours per day. The noises are normal living noises, and the tenant's issues go beyond the scope of their work. In an attempt to satisfy the tenant, the witness offered to attend after hours, but the tenant insisted that only the non-resident building manager (CS) could attend and wanted the witness to reprimand (CS) and then inform the tenant about what disciplinary actions were taken. The witness told the tenant that supervision of staff is not his responsibility, and his abusive behaviour toward CS made it very uncomfortable.

The tenant has been argumentative and said he was recording the witness. The witness told the tenant that the witness was not comfortable with being pushed for a response, but the tenant continued to badger the witness to answer direct questions

without verifying anything. The witness told the tenant that email was more suitable, would be immediate and time-stamped. After that, the tenant sent notes to the landlord's office and copied the witness with a YouTube link to listen to the actions of upstairs neighbours having private relations. The witness refused to listen to the YouTube and did not contact the resident in the upper unit to tell him about it. It was very bizarre to record such evidence.

The witness believes that the only way to satisfy the tenant would be for the landlord to evict the resident in the upper unit, then new neighbours who have young children, or those who vacuum or have guests. Others live in the neighbouring units without complaint.

The witness thought it could be resolved when the witness first heard of the issues and contacted the tenant after work hours due to the tenant's work schedule. The witness has many years experience and knows that apartment living can be challenging, but there is no way to satisfy the tenant without infringing on the rights of other tenants.

#### SUBMISSIONS OF THE TENANT:

Based on the evidence it's very clear that the tenant has attempted to follow the letter of the law about recordings, and the only person who could access the YouTube were people who have the link. The landlords have asked for evidence and then deny it, then try to gaslight the tenant that what the tenant is doing is illegal. The tenant asks that there be no retaliation by the landlord, such as renoviction.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

The landlords have never said that recordings are illegal, just uncomfortable. The landlord does not believe that the landlord's agents have been negligent.

#### Analysis

Where a party makes a monetary claim as against another party for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate any damage or loss suffered.

I have reviewed all of the evidence and listened to several of the hundreds of the audio recordings provided by the tenant. One of the audio recordings is entitled “May 21<sup>st</sup>2018- (JR) threatening me – CALL Manager” but I heard no threats from the person the tenant had called. Some of the complaints mentioned in the audio recordings are about other tenants, such as cleaning a car with music playing loudly.

I also accept the undisputed testimony of the landlord’s agent and witness that no other residents have complained, and that the only way to satisfy the tenant is to evict the resident in the upper level, but the landlord would have a weak case. I accept that, and I also accept that the noises are normal living noises in an apartment.

I am not satisfied that the tenant has established that the landlord has failed to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, and I dismiss the tenant’s application.

### Conclusion

For the reasons set out above, the tenant’s application is hereby dismissed in its entirety without leave to reapply.

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: February 17, 2023

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Residential Tenancy Branch