



# 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 the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to sections 28 and 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The tenant and the landlord's CEO attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings.

Both parties confirmed their email addresses for service of this Decision.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to sections 28 and 67 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced

here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts:

- this tenancy began on January 1, 2022,
- this tenancy ended on March 31, 2022 by way of a Mutual Agreement to End Tenancy, and
- monthly rent in the amount of \$989.00 was payable on the first day of each month.

A written tenancy agreement was signed by both parties and a copy was submitted for this application. The Mutual Agreement to End Tenancy was also entered into evidence.

The tenant's application for dispute resolution seeks three months' rent, all rent paid during the tenancy, for loss of quiet enjoyment caused by a tenant residing in the unit above the subject rental property (the "upper tenant").

The tenant entered into evidence many noise complaint emails to the landlord about the upper tenant. The emails were sent on the following dates:

- January 29, 30, and 31 of 2022
- February 4, 5, 7, 8, 21, 28 of 2022
- March 6, 10, 11, 12, 14, 17, 21, 26, 28 and 31 of 2022

The tenant entered into evidence other complaint emails regarding different issues at the subject rental property. As these issues were not identified in the tenant's application for dispute resolution as a basis for this claim, they are not detailed in this Decision.

Both parties agree that:

- On February 5, 2022 the tenant informed the landlord via email that she was vacating the subject rental property at the end of March 2022
- The landlord agreed to end the fixed term tenancy early without penalty by way of the Mutual Agreement to End Tenancy

The tenant testified that:

- When she first moved in the tenant living above her started to harass her by banging and pounding on the floor
- she took notes on a daily basis of the sounds coming from the upper unit

- the sounds coming from the upper unit were not normal sounds from everyday living
- the upper tenant would bang loudly, sometimes four times in a row
- the upper tenant would tap on the stove vent which she could hear in her suite
- the upper tenant had a machine which made a swishing sound and would turn it on to annoy her several times a day

The tenant entered into evidence 22 video recordings. The majority of the video recordings were of the ceiling of the subject rental property meant to capture noises heard from above. No loud banging sounds can be heard in the ceiling videos, only a few normal living sounds. In some of the videos a barely audible whooshing sound can be heard, the whooshing sound is more pronounced in two of the videos.

The tenant entered into evidence videos of her stove vent, tapping can be heard in those videos; however, it is not clear where the sound is coming from. The tenant entered into evidence two videos taken out of an open window and clapping can be heard. The tenant entered into evidence a video taken outside the door of the upper tenant and clapping can be heard.

The CEO testified that the first notice of concern was received from the tenant on January 29, 2022 and continued regularly thereafter. The CEO testified that for almost every e-mail received an agent of the landlord replied to the tenant in person or via e-mail. The above testimony was not disputed by the tenant.

The CEO testified that in response to the noise complaints the landlord arranged two inspections of the upper tenant's unit to determine if there were any exercise or other machines responsible for the noise complained of by the tenant. The inspections were completed on February 1, 2022 and March 8, 2022 in which nothing of concern was found.

The CEO testified that no other tenants have complained about the upper tenant and that the tenants who resided in the subject rental property before and after the tenant have not complained about the upper tenant.

The tenant testified that other tenants have complained about the upper tenant to the landlord. No documentary evidence to support the above testimony was provided in evidence.

The CEO testified that agents of the landlord spoke with the upper tenant on a number of occasions about noise but none of the tenant's noise complaints were corroborated. Both parties agreed that the landlord facilitated a meeting between the tenant and the upper tenant in early February 2022. The tenant testified that the agent for the landlord who attended the meeting did not support her and made excuses for the upper tenant.

The tenant testified that while her application for dispute resolution claims all rent paid for the duration of the tenancy, she is seeking all or part of her rent returned. The tenant testified that she did have a roof over her head but that due to the noise issues, she should get at least half of her rent back from the landlord.

### Analysis

Section 28 of the *Act* states that 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.

Residential Policy Guideline 6 states that 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.**

[Emphasis added]

I find that the landlord promptly responded to the tenant's noise complaints by responding to the tenant's emails, speaking with the upper tenant, setting a meeting with the upper tenant and scheduling two inspections of the upper unit. The landlord has a duty to protect the tenant's right to quiet enjoyment but must at the same time respect

the upper tenant's tenancy rights. The landlord cannot evict the upper tenant for noise complaints without further investigation, which I find that the landlord was undertaking when the tenant moved out. I note that the tenant decided to end the tenancy only six clear days after the first complaint. I find that the landlord continued to respond and investigate the noise complaints until the end of the tenancy.

As the landlord took reasonable steps to investigate the interference alleged by the tenant, I find that the landlord has not breached section 28 of the *Act* and so the tenant is not entitled to compensation. The tenant's application is dismissed without leave to reapply.

As the tenant was not successful in this application for dispute resolution, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

### Conclusion

The tenant's application is dismissed 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: May 25, 2023

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Residential Tenancy Branch