



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      MNDC OLC RP RR

### Introduction

This hearing dealt with an application by the tenant for monetary compensation for loss of quiet enjoyment, as well as for an order for repairs, an order that the landlord comply with the Act, and an order for a reduction in rent for services or facilities agreed upon but not provided. The tenant, an advocate for the tenant and two agents for the landlord all participated in the teleconference hearing.

In the hearing, the tenant clarified that she was not seeking any additional orders that the landlord comply with the Act other than carrying out the requested repairs and providing quiet enjoyment; nor was she seeking any additional rent reduction beyond the monetary compensation claimed. I therefore dismissed the portions of the tenant's application regarding an order the landlord comply and a reduction in rent.

### Issue(s) to be Decided

Is the tenant entitled to the monetary compensation claimed?  
Should the landlord be ordered to carry out the requested repairs?

### Background and Evidence

The tenancy began on or about July 15, 2010, with monthly rent in the amount of \$500.

The evidence of the tenant was as follows. Since the beginning of the tenancy, the tenant has only been able to sleep one or two hours every night, because of constant noise coming from other rental units below her. Most of the noise has come from unit 11, and some from unit 12.

The tenant testified that she first complained to the landlord about the noise coming from unit 11 about two weeks after the tenancy began. In her documentary evidence, the tenant included an email to the landlord dated October 1, 2010, in which she detailed the problems with the tenant in unit 11.

On January 3, 2011, the tenant made a written complaint, together with the tenant from unit 13, regarding excessive noise from the tenant in unit 12.

In her documentary evidence the tenant submitted emails to the landlord dated January 8 and 22, 2011. Both emails contain the header "The guy below me started up again...." The January 8, 2011 email refers to "the guy directly below me." The tenant testified that in addition to the ongoing noise, the tenant in unit 11 repeatedly harassed her, came to her door 15 to 20 times and made threats, and the tenant had to call the police. The tenant stated that her health "was becoming very poor" and she lost her job because of not being physically and mentally alert due to lack of sleep. The tenant did not see the landlord taking any action regarding her noise complaints until two days before the hearing.

The tenant also provided testimony regarding items in her rental unit that require repairs. The tenant emailed the landlord on October 23, 2010 about the presence of mould in her rental unit, and the landlord instructed the tenant on how to clean her unit to prevent mould. The tenant did not provide evidence of any other written requests for repairs.

The tenant calculated her monetary claim as follows. The tenant has only had quiet enjoyment of her rental unit for approximately 12 hours out of every 24 hours, and she has therefore claimed half of her rent, or \$250, for six months, for a total of \$1500. She claimed a further \$300 for the cost of medications, ear plugs, and other costs incurred as a result of the ongoing noise, as well as for compensation due to the landlord's failure to do repairs as promised.

The response of the landlord was as follows. After receiving the tenant's complaint at the end of September 2010, the landlord served the tenant in unit 11 with a warning letter. The landlord received the tenant's complaint of January 3, 2011 regarding the tenant in unit 12, and served the tenant in unit 12 with a warning letter. The landlord then received the tenant's complaints of January 8 and January 22, 2011. The landlord mistakenly thought that last two complaints were also in reference to the tenant in unit 12, and they served the tenant in unit 12 with a notice to end tenancy for cause. The landlord submitted that the tenant ought to have properly identified which tenant was the source of the noise. The landlord further submitted that the tenant did not provide supporting evidence or inform the landlord of the harassment by the tenant in unit 11 and the resulting attendance by police. Nor did the tenant provide any doctor's reports, copies of prescriptions or any other evidence to support her claim that her health had

been affected by the noise. The landlord disputes the tenant's entitlement to any compensation for loss of quiet enjoyment.

In regard to the remainder of the tenant's monetary claim, the landlord submitted that the tenant should not be entitled to that amount either. The tenant failed to provide receipts for any of her medication or other expenses. There were no written requests for repairs aside from the one email regarding mould, and the landlord has already dealt with that issue.

In regard to repairs, the landlord stated that the tenant ought to send a written request, via email, for any required repairs. The landlord will then generate a work order to carry out the repairs.

### Analysis

In regard to the issue of loss of quiet enjoyment, I find as follows. I accept the tenant's evidence that she suffered a loss of quiet enjoyment due to the ongoing noise from the tenant in unit 11. However, I do not find that the tenant is entitled to compensation for lack of quiet enjoyment for the duration of the tenancy. The tenant could not reasonably expect the landlord to take action unless she properly notified the landlord of the problem. The tenant made a written complaint about the tenant in unit 11 on October 1, 2010, and the landlord served the tenant with a written warning. The tenant then did not make any written complaints again until January 2011. I therefore find that the tenant is not entitled to any compensation for loss of quiet enjoyment before January 2011.

As a result of the tenant's complaint on January 3, 2011, the landlord did serve the tenant of unit 12 with a warning letter. I therefore find that the tenant is not entitled to compensation for the disturbance caused by the tenant in unit 12.

I do not accept the landlord's submission that the tenant should not receive any compensation because she did not properly identify the source of the noise. When the landlord received the tenant's written complaints on January 8 and 22, 2011, they ought to have investigated the complaints before serving a notice to end tenancy. The landlord cannot fault the tenant for their own failure to investigate.

The tenant stated that she did not see the landlord taking any action regarding her noise complaints until two days before the hearing. I find that the tenant is entitled to compensation for loss of quiet enjoyment from January 8, 2011, the date of her email complaint about the tenant in unit 11, until February 15, 2011, a total of 39 days. However, I do not find that compensation of 50 percent of the rent for that time period is

reasonable in the circumstances. The tenant did not provide sufficient evidence such as a doctor's note, prescriptions or receipts to establish that her health suffered as a result of the noise. I find that compensation of 15 percent of the rent over 39 days is reasonable. The tenant is entitled to a total of \$100 for loss of quiet enjoyment.

The tenant did not provide sufficient evidence to support the remainder of her claim of \$300. The tenant did not provide receipts for expenses or make written requests for repairs. I therefore dismiss that portion of the tenant's application.

I find it is not necessary to order the landlord to carry out repairs at this time. The tenant should submit written requests for repairs via email, and the landlord will generate work orders to address those issues.

### Conclusion

The tenant is entitled to total compensation of \$100, which she may deduct from her 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: February 24, 2011.

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Residential Tenancy Branch