



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HABITAT HOUSE SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant filed under the *Residential Tenancy Act*, (the “*Act*”), for a monetary order for damage or compensation under the *Act*. The matter was set for a conference call.

The Property Manager and the Building Manager (the “Landlord”) and Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before 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.

### Preliminary Matter

At the outset of the hearing, the Landlord testified that the Tenant had recorded the business name for the Landlord incorrectly on his application. The Landlord provided the correct spelling of their name, and it has been recorded on the style of cause page of this decision.

Additionally, the Tenant was unable to prove service of the Notice of Hearing Documents on the other two respondents listed on his application. Both the Tenant and the Landlord agreed that the other two respondents listed on his application should be removed from these proceedings.

### Issues to be Decided

- Is the Tenant entitled to a monetary order for damage or compensation under the *Act*?

### Background and Evidence

The parties agreed that the tenancy began on June 1, 2014, as a month to month tenancy. Both parties agreed that the Tenant receives a rent subsidy and that the Tenant pays rent in the amount of \$295.00 a month, payable on the first day of each month. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that the Landlord began renovations on the rental property in March 2016 and that the renovations continued until May 2018. The Tenant testified that the renovations included the replacement of the balconies on the rental building. The Tenant testified that there are 240 balconies on the rental property, that are made of cement, and that throughout the renovations the Tenant was subjected to loud jackhammering, and concrete dust every day. The Tenant also testified that he was without the use of his balcony for six months while they worked on his rental unit. The Tenant is requesting \$2,000.00 in compensation due to his pain and suffering during the renovation period as well as \$3,540.00 in the recovery of all of his rent for the renovation period.

The Tenant testified that throughout the renovations he was extremely disturbed by the constant work on the building, the noise, the lack of security on the construction site and the coming and going of the transient workers the construction company used.

The Landlord testified that the building is 55 years old that the renovations were required in order to maintain the building as required by the *Act*. The Landlord agreed that there is 240 rental unit in the building that the major renovations did take over a year to complete.

The Landlords also testified that they had provided the Tenant with the use of a secondary suite during the period of the renovations, which was located in a different building, way form all of the noise and dust of the renovations.

The Tenant testified that he did agree with the Landlord, that they had offered him the use of the secondary suite and that he had stayed there during some of the renovation

work. Tenant also testified that the Landlord had not allowed him to use the secondary suite for the full-time period of the renovations. The Tenant testified that the Landlord had made him go back to his rental unit before the renovations had been completed.

The Landlord testified that they did not make the Tenant go back to his rental unit, that the Tenant had chosen to go back there on his own. The Landlord also testified that the Tenant had been free to use the secondary suite throughout the duration of the construction period.

### Analysis

Based on the above, the oral testimony and the documentary evidence, and on a balance of probabilities, I find as follows:

I accept the testimony of both parties that the Landlord conducted major renovations on the rental property between March 2016 to May 2018. I also accept the testimony of both parties that the Landlord had provided the Tenant with the use of a secondary suite during the construction period.

I find that the Landlord took reasonable steps to minimize the effects of the construction on the Tenant by offering the Tenant the use of a secondary suite, away from the noise and disruption of the renovations.

However, during the hearing, I heard contradictory testimony from both parties regarding how long the Tenant was permitted to use of the secondary suit during the construction period.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the Landlord has the burden of proving that this tenancy should end in accordance with his Notice.

I have carefully reviewed the testimony and documentary evidence provided by Tenant, and I find that there is no evidence before me to show that the Tenant had been required, by the Landlord to move out of the secondary suite during the renovation period. I find that the Tenant has not provided sufficient evidence to prove that the Landlord had removed the use of the secondary suite from him, during the construction

period. Therefore, I find that the Tenant has not proven that he suffered a loss due to the actions of the Landlord or that the Landlord had failed to comply with the *Act*.

Consequently, I dismiss the Tenant's claim for \$2,000.00 in compensation for pain and suffering and \$3,500.00 in the recovery of all of the rent the Tenant paid during the construction period.

### 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: November 29, 2018

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Residential Tenancy Branch