



# 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 dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The landlords acknowledged service of the Notice of Hearing and Application for Dispute Resolution. The parties did not raise any issues regarding the service of evidence

### Issue(s) to be Decided

Is the tenant entitled to the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act, Residential Tenancy Regulation ("Regulation")* or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### Background and Evidence

In support of their positions, the parties together submitted over 300 files including documents, photographs, videos and correspondence. While I have turned my mind to the evidence and the testimony, not all details of the submissions and arguments are reproduced here. The relevant and important aspects of the claims and my findings are set out below. I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

The month-to-month tenancy began on August 1, 2010. Monthly rent is currently \$984.00 payable on the first of the month. The tenant provided a security deposit of \$400.00 which the landlords hold. The tenant submitted a copy of the signed tenancy agreement.

The unit is a basement suite in a residential building. There is an apartment upstairs occupied by a man and woman referred to as the "upstairs occupants". The landlord testified that the upstairs occupants are not permitted to smoke in their apartment under the terms of their tenancy agreement.

The tenant testified regarding the events that occurred in the two years the upstairs occupants lived in the building. He said he had a good relationship with the landlords since he moved in in 2010. The tenant said he is non-smoking.

The tenant testified that shortly after the upstairs occupants moved in "about two years ago", he noticed a strong smell of marijuana coming from their apartment. He said that the upstairs occupants smoked marijuana "first thing in the morning until last thing at night", often on their deck which was immediately above the tenant's exterior door and windows. As a result, the tenant's unit was frequently "flooded" with the smell of

marijuana second-hand smoke.

Also, the tenant testified he experienced an uncomfortable and frequent level of noise from the upstairs occupants; there was often loud noise, voices and “stomping” on the floor.

The tenant testified that he told the landlords about his concerns about noise and second-hand smoke several times; the problems continued unabated. The tenant finally wrote a letter of complaint to the landlords dated June 7, 2019, a copy of which was submitted, setting out his objections about the noise and smell of marijuana in his unit. In his letter, the tenant referred to previous complaints he made to the landlords; he stated that the weather was getting hotter and “I could not open the back windows to get fresh air in” because of the smell of marijuana and the noise.

The landlords acknowledged receipt of the letter.

After getting advice from the RTB about what to do, the tenant testified he wrote a longer letter to the landlords on June 14, 2019, a copy of which was submitted. In the letter, the tenant described his complaints, chiefly the following:

1. the frequent marijuana smoke in his unit, the “intimidation” visit by the upstairs occupants of his friends and family when they came to visit;
2. the “loud stomping” of their feet upstairs;
3. the upstairs occupant taking over “75%” of the storage shed and the use of the back yard” instead of equally sharing with the tenant; and
4. the upstairs occupants littering the shared areas with “quad, ramps, bags of empty beer cans etc.”

In the letter, the tenant wrote in part as follows:

*It is for all these reason that I am appealing to you, my Landlords, to please respect my right to a “quiet enjoyment” of my suite and enforce the rules, Your Rules, with the tenant upstairs. No smoking marijuana. Stop the intimidation over the driveway. Enforce your polices in regards to the shed and the yards. The RTB has explained to me that upon delivery of this letter you have 7 days to address these issues or possibly face a hearing with the board [...]*

*I feel I have been a good tenant for the last 10 years. All I ask is that you enforce the rules with the upstairs renter and let me get back to the quiet enjoyment of*

*my suite.*

The tenant testified that nothing has changed in the year since then. The same problems continue, and some have worsened.

The landlords stated that they tried to mediate the problems raised by the tenant and find solutions. After receiving the tenant's letters, they testified that they contacted the upstairs occupants and met with them on June 18, 2020; the landlords warned them that smoking was prohibited and discussed solutions to the issues raised.

The landlords testified that the upstairs occupants promised to be cooperative and said they would taken certain actions, such as only smoking off the property, and fairly dividing the storage space.

However, the tenant testified that the upstairs occupants immediately began to retaliate against the tenant, a pattern which continues to this day.

For example, both parties agreed that the upstairs occupants began to complain about the tenant's dog leaving feces in the shared yard. They also submitted a long letter of complaint to the landlords about the tenant's use of the shared laundry room, oil stains from the tenant's car in the driveway, and the tenant "cornering" the male upstairs occupant on one occasion making him "feel uncomfortable".

The tenant claimed the complaints were fabricated after he wrote to the landlords in order to "get back at me" for complaining.

In order to address the issues raised, the landlord sent a letter to all occupants of the building setting out in point form a list of solutions. For example, the list included a prohibition on smoking and noise, equal sharing of the driveway and carport, permitted parking of guests' vehicles, and shared use of the laundry room.

The tenant testified that the landlords' efforts were ineffectual, and the campaign of retaliation continued and escalated. His testimony and evidence are summarized as follows:

1. The tenant returned home from work later in June 2019 and was met by the male upstairs occupant who screamed obscenities at the tenant, saying that he would "cut your head off and throw you in a hole", among other threats;

2. The tenant said he called the police and two members of the police arrived; the upstairs occupant denied that he had threatened to kill the tenant; the tenant provided a video of the later part of the incident which confirmed the tenant's complaint;
3. The tenant notified the landlord of the incident; during the hearing, the landlord acknowledged the notification;
4. The tenant stated that subsequently when his two sisters came to visit and parked in his parking area, the upstairs occupant would come out, "screaming" and "swearing" and telling the tenant's guests to "park on the street";
5. The tenants continued to smoke in or near the building; the smell of marijuana has continued to this day and "floods his kitchen"; the tenant has provided videos to the landlords of the smoking; the landlords acknowledged receipt of the evidence but stated that they had not seen the upstairs occupants smoke in or near the building although they had driven by the building many times;
6. The upstairs occupants play "vulgar" music that is disturbing and loud, often stamping their feet in beat to the music, making it impossible for the tenant to enjoy being home; the tenant testified that the noise often begins as soon as he comes home, and he has concluded the noise is deliberate and retaliatory;
7. The tenant is unable to sit outside because of the behaviour of the upstairs occupants who swear at him and make noise which destroys his peace and quiet;
8. The tenant is currently unemployed because of the State of Emergency; he stated that he is unable to stay in the unit after the upstairs occupants return from work in mid-afternoon when the marijuana smell and the noise resume;
9. The tenant testified that the upstairs occupant (during the State of Emergency) spit on the tenant and he feared for his health; the tenant reported the incident to the landlords and the police.

During his testimony, the tenant expressed increasing fear for his health and safety. He said, "Never in my life have I experienced such behaviour". The tenant testified that his living in the unit had become "terrible, unacceptable" and like "living in hell". The tenant said, "I don't sleep well". He stated that he had a heart attack early in 2020 and that the

situation with the upstairs occupants is affecting his health. He does not want to move because he has lived in the unit for ten years.

The landlords acknowledged they knew about the tenant's version of events. However, they stated, "There was nothing we could do" after they had warned the upstairs occupants because of their denials, saying, "We didn't have proof". The landlords submitted copies of many warning texts to and from the upstairs occupants.

Because of the complaints from the upstairs occupants about the tenant (primarily about dog feces), the denial of the tenant's claims by the upstairs occupants, and the "lack of proof", the landlords testified they did not believe they had enough evidence to bring an application to evict the upstairs occupants; they have not taken any proceedings to date.

The tenant claimed an award for loss of quiet enjoyment based on an unreasonable noise level from the upstairs occupants and the pervasive, obnoxious smell of second-hand marijuana smoke in his unit, coupled with the landlords' failure to do anything effective about it. The tenant requested damages in the amount of a portion or all the rent that he has paid since June 2020 when he submitted his letters of complaint. He requested that the landlord be ordered to take steps to provide a unit that is free of smoke and intolerable noise so that the tenant has the quiet enjoyment to which he is entitled.

The landlords acknowledged that the tenant may have a small claim for loss of quiet enjoyment but denied that the tenant was entitled to any significant award.

### Analysis

Section 7(1) of the Act provides that if a landlord does not comply with the *Act*, the regulations or their tenancy agreement, the non-complying landlord must compensate the tenant for damage or loss that results. The party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

*22. 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.*

[emphasis added]

*Policy Guideline 6 – Entitlement to Quiet Enjoyment* provides guidance on issues that are likely to be relevant to applications for loss of quiet enjoyment.

Section 60 of the *Act* establishes that if damage or loss results from a tenancy agreement or the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. The purpose of compensation is to put the claimant who suffered the damage or loss in the same position as if the damage or loss had not occurred. Therefore, the claimant bears the burden of proof to provide sufficient evidence to establish **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the *Act*, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the *Act*.

In this case, the onus is on the tenant to prove entitlement to a claim for a monetary award. The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

**Tenant's claim: loss of quiet enjoyment**

***1. Has the tenant incurred damage or loss?***

I find that the tenant suffered unreasonable disturbance to his right to quiet enjoyment of his unit as a result of which he has incurred damage, that is, loss of peace, quiet and privacy.

In reaching this conclusion, I have considered that the tenant has lived in the building with other people upstairs for eight years before the upstairs occupants moved in. All parties agreed the tenant had no complaints.

I have considered the evidence and testimony. I found the tenant believable, sincere and forthright. His narrative accords with the submitted evidence.

Where his version of events differs from the landlords', I accept the tenant's version as the more reliable as he lived in the unit and experienced the noise and smell of smoke first hand. I give most weight to his testimony which was supported in all material respects by submitted evidence.

I accept that the disturbance has gone on for two years, since June of 2018, and worsened in June of 2019 when the tenant submitted two clear letters of complaint to the landlords. I find the complaints of the upstairs occupants about the tenant are retaliatory in nature as they started after the tenant complained; I also find these actions have escalated over the last year and resulted in at least two complaints to the police by the tenant.

I accept the tenant's testimony that the upstairs occupant threatened his life. I find the tenant has a genuine and well-founded fear for his health and safety.

I find the tenant has undergone unreasonable and ongoing noise, unreasonable and ongoing second-hand marijuana smoke and intimidation and harassment.

I find the tenant has met the burden of proof on a balance of probabilities with respect to this first part of the test.

*2. Has the damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement*

I find that the damage or loss referenced in the earlier answer resulted directly from a violation by the landlords of their lawful obligations.

I have considered *The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* which states as follows:

*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 breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16).*

(Emphasis added)

I find that the tenant clearly, consistently and repeatedly complained to the landlords about the upstairs occupants, particularly the noise and second-hand marijuana smoke. The tenant lived in the building and provided the landlords with believable evidence and first-hand reporting upon.

As acknowledged by them, I find the landlords were aware of the interference or unreasonable disturbance but failed to take reasonable steps to correct these. I find that the landlords made well-meaning early efforts to correct the upstairs occupants' behaviour to bring it in line with the tenancy agreement and the tenant's right to quiet enjoyment.

However, I find that their efforts were inadequate, ineffective and unreasonable given the circumstances. I find the landlords actions were futile in restoring the tenant's right to quiet enjoyment which should have been assured by September 1, 2019, 6 weeks after the two letters of complaint.

I do not accept as reasonable the landlords' explanation that there was nothing they could do to protect the tenant's quiet enjoyment. I find that the landlords were presented with police reports, videos, and many documents which formed a basis for appropriate

action.

I do not accept as reasonable the explanation by the landlords that the upstairs occupants had valid complaints about the tenant, especially regarding dog feces. I find the complaints to the landlords from the upstairs occupants about the tenant were retaliatory in nature and not credible. The parties agreed that the upstairs occupants threatened to kill the tenant and the threats were reported to the police.

I accept the tenant's claim that he is afraid for his safety and has limited use of the unit. I accept his statement that he is increasingly afraid of the upstairs occupants and worried about what they would do next. I also find that the landlords knew about the tenant's fear for his safety which should have outweighed their concern about allegations of dog feces in the yard.

3. What is the actual monetary amount or value of the damage or loss?

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

*In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.*

As stated, I find that the landlords did not meet their obligations to the tenant to provide quiet enjoyment. I find the tenant was significantly deprived of his right to live peacefully by the ongoing retaliatory actions of the upstairs occupants from August 1, 2019 to June 2020, a period of for almost 11 months.

I have considered the history of this matter, the parties' testimony and evidence, and I find the tenant has met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment from August 2019, 6 weeks after the delivery of the letters of complaint, to date, a period of almost 11 months. I find it is reasonable that the tenant should receive compensation in the amount of 50% of the rent paid for this period of 11 months.

4. *Has the tenant done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act?*

I find the tenant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed. The tenant made verbal complaints, followed by two letters of complaint. The tenant has involved the police and notified the landlords about the police investigations. The tenant informed the landlords about the ongoing problems. I accept the tenant's testimony that he spends as much time as he can away from the unit because the second-hand smoke and noise are unbearable to him.

In summary, the tenant is entitled to a monetary award as follows, to be deducted from the monthly rent in the amount of \$984.00 until the award is paid in full:

ITEM	AMOUNT
Rent – 11 x \$984.00 x 50%	\$5,412.00
Reimbursement of filing fee	\$100.00
<b>TOTAL AWARD</b>	<b>\$5,512.00</b>

*Tenant's Claim under Section 62*

Under section 62, the Arbitrator has authority as follows:

- 62** (1) The director has authority to determine
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
  - (b) any matters related to that dispute that arise under this Act or a tenancy agreement.
- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
- (3) *The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

[emphasis added]

In consideration of the evidence and the Act, I direct the landlords to provided quiet enjoyment to the tenant effective July 1, 2020.

Conclusion

I grant the tenant a monetary order in the amount of **\$5,512.00** as described above.

This order must be served on the landlords. If the landlords fail to comply with this order the tenant may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

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: June 12, 2020

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Residential Tenancy Branch