



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      MNDCT, OLC, FFT  
                             MNRL-S, MNDCL-S, FFL

### Introduction

The original hearing was convened by telephone conference call at 11:00 am on May 4, 2023. That hearing was adjourned, and an interim decision was issued by me. As a result, that interim decision should be read in conjunction with this decision. The reconvened hearing was attended by the tenants, a Farsi interpreter, the witness for the tenants, the landlord's agent, the landlord's daughter, and the witnesses for the landlord. All testimony provided was affirmed.

Although I have reviewed all evidence and testimony before me that was accepted for consideration, I refer only to the relevant and determinative facts, evidence, and issues in this decision.

### Issue(s) to be Decided

Is the landlord entitled to recovery of \$1,650.00 in lost rent for February 2023?

Are the tenants entitled to \$9,850.00 in compensation for monetary loss or other money owed due to loss of quiet enjoyment and having to move?

Are the parties entitled to recovery of their respective filing fees?

### Background and Evidence

The parties agreed that the tenants gave notice to end their tenancy at the end of January 2023 by way of an email sent to the agent on January 1, 2023. The agent stated that they did not receive the e-mail until January 3, 2023, and argued that in any event the tenants did not give proper notice to end their tenancy. The parties agreed that the tenancy was periodic (month-to-month) in nature at the time notice was given, and that rent in the amount of \$1,650.00 was due on the first day of each month.

The tenants argued that the agent had agreed that they could end their tenancy early by giving notice on January 1, 2023, and that the police had advised them that they could end their tenancy at any time. As a result, the tenants argued that they were permitted to end their tenancy by way of their e-mail on January 1, 2023, and therefore they do

not owe any rent for February. Additionally, the tenants argued that they were required to end their tenancy due to unreasonable disturbances from the occupants of the upper unit that the landlord failed to adequately address or remedy.

The agent argued that the tenants must have misunderstood information provided by the police officer, as tenants are required to give proper notice under the Act to end their tenancies and that failing to do so may result in a loss to the landlord for which the tenants are responsible. The agent stated that the tenants requested on December 31, 2022, to end their tenancy January 1, 2023, as they had found a place and could move in on January 1, 2023. The agent stated that the landlord agreed that the tenants could end their tenancy early on January 1, 2023, if they provided immediate proper notice on December 31, 2022, to do so. The agent stated that they advised the tenants of this, but the tenants did not provide notice on December 31, 2022, and did not vacate on January 1, 2023. The agent stated that they did not receive the email sent on January 1, 2023, until January 3, 2023, and that in this notice the tenants indicated that they had found a place for February 1, 2023, not January 1, 2023.

The agent argued that as the tenants failed to give written notice immediately on December 31, 2022, with a tenancy end date of January 1, 2023, they were required to give proper notice under the Act to end their tenancy on January 31, 2023, which they did not do. As a result, the agent stated that the landlord lost \$1,650.00 in rent for February 2023 as the rental unit could not be re-rented on time. The agent therefore sought recovery of this amount from the tenants on behalf of the landlord.

The tenants also sought \$9,850.00 in compensation because they argued that the landlord failed to protect their right to quiet enjoyment resulting in loss during the tenancy and the need for them to give notice. Their claim amount was broken down as follows:

- \$4,200.00 for loss of quiet enjoyment during the months of November and December of 2022 and January of 2023; and
- \$4,900.00 for increased rent over the 12-month period following the end of their tenancy as their new rent was \$350.00 higher per month.

The tenants argued that after new tenants moved in upstairs, they were constantly disturbed and affected by unreasonable noise from the upper rental unit which affected their jobs and mental health. The tenants characterized the noise as "torture" describing it as constant running jumping and screaming. The tenants argued that the landlord failed to adequately address their concerns and repeated complaints, stating that although the agent came to observe the sounds, they ignored and dismissed them as normal. The tenant stated that although the agent spoke to the tenants of the upper unit this never solved the problem and in two situations the police attended due to noise.

The tenants therefore argued that they should be entitled to the reimbursement of the rent paid for November and December of 2022, and January of 2023, as they were not able to have quiet enjoyment of the rental unit. They also argued that they should be

entitled to recovery of the additional \$350.00 per month they are now paying in rent at their new place, as they were required to travel many hours every day in cold temperatures looking for a new place and moved out due to the noise.

The agent stated that they always took the noise complaints seriously bringing them up with the tenants of the upper unit and attending the rental unit to observe the noise. However, they stated except for 1 incident late at night all other incidents were simply daily living noises of a family with a young child during regular daytime hours. The agent stated that there was nothing unreasonable about the amount, type, or duration, of the noise and that the tenants were simply upset because the previous occupants of the upper unit were three adults working 12-hour shifts. As a result, the agent stated that the tenants were used to having almost no noise at all from the upper occupants which is not normal and not reasonable for a family with a young child.

The agent stated that the building is over 40 years old with a wood frame and as such there is obviously noise transfer throughout the home. The agent stated that they attended the rental unit on three to four occasions for long periods of time at the request of the tenants, and that during those times there was not unreasonable noise coming from the upper rental unit. The agent stated that they also went to the upper unit to observed noise there, and found the same thing. The agent stated that they also sealed the connecting door between the units and added soundproofing to appease the tenants and reduce noise transfer. They also argued that the sounds of a child playing and engaging in normal daily living activities during the day are not unreasonable. While the agent agreed that the police were called on several occasions, they stated that this was because the tenants were banging on the interior door separating the rental units something the tenants denied. The tenants instead characterized it as knocking loudly.

Both parties called witnesses who provided affirmed testimony. The agent called the occupants of the upper rental unit as their witnesses who stated that ever since they moved in, the tenants were always sending them constant complaints about regular daily living noises. Although they acknowledged that their child does make noise when happy or excited, they stated that this is normal and not unreasonable. They also stated that the agent was proactive in dealing with the tenants' complaints.

The tenants called a friend who stated that they regularly visited the rental unit and witnessed loud things such as running and jumping from children. Their witness characterized these sounds as "not regular sounds" and described them as disruptive.

Both parties submitted documentary evidence for my consideration including but not limited to copies of correspondence and complaints, written submissions, and audio and video recordings.

## Analysis

Section 45(1) of the Act sets out how and when a tenant may unilaterally end their month-to-month tenancy. It states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The parties agreed that the tenancy was month-to-month at the time notice was given by the tenants, and that rent was due on the first day of each month. As a result, I find that the tenants were not entitled to end their tenancy on January 31, 2023, by giving notice after December 31, 2022. Although the tenants argued that the landlord agreed to the short notice, I disagree. The agent stated that although they agreed on December 31, 2022, to allow the tenants to end their tenancy on January 1, 2023, as originally proposed by the tenants, if the gave immediate written notice to do so on December 31, 2023, this did not occur. Proof of this agreement was submitted by the agent which satisfied me that the terms noted by the agent at the hearing were correct. The agent stated that the tenants did not give notice as required on December 31, 2022, to end their tenancy the following day as agreed, and did not vacate on January 1, 2023. As a result, they argued that the agreement was breached by the tenants and not enforceable. I agree.

In any event, the agent argued that at no time did they agree to allow the tenants to end their tenancy on January 31, 2023, by giving late notice. Again, I agree. The documentary evidence submitted by the agent makes the terms of the agreement clear, and nothing submitted by the tenants satisfied me that the agent or the landlord agreed that the tenants could, at any time, simply give short notice to end their tenancy without being responsible for any loss of rent suffered by the landlord as a result.

As set out above, I find that the tenants were required to give proper notice under section 45(1) of the Act to unilaterally end their tenancy on January 31, 2023. As they did not give notice by email until January 1, 2023, and the agent did not even receive that notice until January 3, 2023, I find that the earliest they could have ended their tenancy under section 45(1) of the Act by way of that notice was February 28, 2023.

The parties agreed that the tenancy ended January 31, 2023, and I am satisfied the tenants failed to give proper notice under section 45(1) of the Act to end the tenancy on that date. I am also satisfied that the landlord lost \$1,650.00 in rent for the month of February 2023 because of the tenants' breach of section 45(1) of the Act. As a result, and pursuant to sections 7 and 67 of the Act, I grant the landlord's claim for recovery of \$1,650.00 in lost rent for February of 2023. As the landlord was successful in their claim, I also grant them recovery of the \$100.00 filing fee under section 72(1) of the Act.

The tenants argued that they suffered a loss of quiet enjoyment which forced them to move out. They sought the following compensation as a result:

- \$4,950.00 for loss of quiet enjoyment, calculated at \$1,650.0 per month for November and December of 2022, and January of 2023; and
- \$4,200.00 in compensation for loss, calculated at \$350.00 per month for 12 months, as they stated their new rent was \$350.00 more per month.

I dismiss the tenants' application for the above noted compensation, without leave to reapply, as set out below. The parties disagreed about whether the occupants of the upper unit were causing an unreasonable disturbance, and whether the landlord acted reasonably and diligently regarding the tenants' complaints. Both parties provided their own testimony and called witnesses, each of whom supported the position of the party they were there to represent. The landlord and their witnesses testified that there was no unreasonable noise in the upper unit, and that the noises complained about by the tenants were simply the reasonable daily living sounds of a family. They also accused the tenant of unreasonably disturbing them. In contrast, the tenants' witness characterized the noises as unreasonable.

The tenants bear the burden of proof in relation to their claims that they were unreasonably disturbed by the occupants of the upper unit and that the landlord failed to act diligently to protect their right to quiet enjoyment. Although they submitted several noise recordings, they are all exceptionally brief and undated. As a result, I am not satisfied that the noises depicted in them were of any significant length or were frequent or ongoing. I also find them to depict the normal sounds of a household with a young child, such as laughing, playing, moving around, and the occasional sound of crying. While I understand that the tenants may have been disturbed by these sounds, as everyone has a different tolerance for sound, I find nothing objectively unreasonable about the amount, type, or duration of noise, or the time of day it occurred. As set out in Policy Guideline #6 temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Although frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment, as set out above, the tenants have failed to satisfy me that any disturbances suffered were unreasonable, frequent, and ongoing.

As a result, I dismiss the tenants' claims for compensation related to loss of quiet enjoyment and the ending of their tenancy, without leave to reapply. As they were unsuccessful in their application, I also dismiss their claim for recovery of their filing fee without leave to reapply.

### Conclusion

The tenants' application is dismissed, in its entirety, without leave to reapply.

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$1,750.00**. The landlord is provided with this Order in the above terms and the tenants

must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision has been rendered more than 30 days after the close of the proceedings, and I sincerely apologize for the delay. However, section 77(2) of the Act states that the director does not lose authority in a dispute resolution proceeding, nor is the validity of a decision affected if a decision is given after the 30-day period in subsection (1)(d). As a result, I find that neither the validity of this decision, nor my authority to render it, are affected by the delay.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 4, 2023

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Residential Tenancy Branch