



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      MNDC

### Introduction

This hearing dealt with the tenant's application seeking a monetary claim due to loss of quiet enjoyment. The tenant is seeking the equivalent of two month's rent in compensation and recovery of moving expenses.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross examine the other party, and make submissions to me.

### Issue(s) to be Decided

Did the landlord breach the tenancy agreement, *Act* or regulations entitling the tenant to the monetary relief sought?

### Background and Evidence

This tenancy began on September 1, 2008. The recent monthly rent was \$985.00. The tenant gave notice to end the tenancy effective September 30, 2010.

The tenant seeks compensation due to loss of quiet enjoyment of her rental unit. The tenant described how she has been subjected to daily noise throughout the day and night. The noise problem is twofold – during the day the occupants above her watch over four children and then at night watch television at a high volume due to hearing difficulties.

The tenant expressed considerable frustration that neither the landlord nor the strata corporation seemed willing or able to address her problem. The tenant stated that the landlord would say that the strata corporation had to respond and then the strata corporation would say that the landlord was responsible. The tenant stated that she even had the offending neighbour come to her apartment and although he agreed it was noisy, he felt it was due to how the building was constructed.

The tenant described how earlier in her tenancy she was experiencing significant disturbance from some other neighbours who were allegedly involved in drug activity. The tenant stated that for this situation both the strata corporation and the property management company worked effectively with her to resolve the problem. The tenant was frustrated that the same was not occurring with the problem now occurring in the unit above her.

The tenant provided a copy of an e-mail exchange between herself and a member of the strata council. The strata council requested that the tenant document her experience of the noise disturbances as the strata council would require evidence if they approached the owner of the offending unit. Although the tenant did complete a log in August 2010, she ended her tenancy before the strata council took any actions against the owner of the offending unit.

The tenant submitted that prior to the e-mail exchange in August 2010 she had been in contact with the strata council on numerous occasions without any adequate response. She stated that after one year of attempting to have someone deal with the issue, she had enough and decided to terminate her tenancy.

The landlord submitted that while they acknowledge the problem it was outside of their control. The landlord submitted that the occupants of the offending suite are owners and only subject to discipline by the strata council. The landlord submitted that they discussed the problem with the strata council on the tenant's behalf but could do nothing further to assist the tenant.

The tenant stated that the owner of the rental unit was also unwilling to take any action. The tenant submitted that the owner of the rental unit told her that he pays the property management company to resolve problems and he pays the strata council to resolve problems so he would not be involved.

### Analysis

All residential tenancy agreements are bound by a covenant of quiet enjoyment. It is a material term provided by the landlord in exchange for the monthly rent and pursuant to section 28 of the *Act* requires that a tenant have:

- reasonable privacy;
- freedom from unreasonable disturbance;

- 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*];
- use of common areas for reasonable and lawful purposes, free from significant interference.

Despite the tenant's right to quiet enjoyment the landlord would not normally be responsible for the actions of another tenant unless it can be demonstrated that the landlord stood idly by and did not take reasonable steps to correct the problem.

While I accept that it is the tenant's perspective that the landlord did not take reasonable steps to address her experience with noise problems, I accept the landlord did not have any ability to stop or control the activities of the occupants in the unit about the tenant because the occupants own the unit and are only accountable to the strata bylaws. It remained up to the strata council to apply the strata bylaws to address the tenant's noise complaints.

While I accept that the noise disturbances experienced by the tenant was significant, it was also very different than the disturbances caused by the other occupants who were involved in drug activity and this likely explains the reluctance of the strata council to become involved in the dispute between the tenant and the owners above her. Although the noise from the children and the television was hard on the tenant, it was not unreasonable use of the owner's home. They were using their home for normal activities of daily living and the noise transference was a result of the age and type of construction of the residential property and in high occupancy housing, such as condominium living, noise transference is an expected aspect of living in that type of housing.

However, given the prolonged nature of the noise disturbances and the tenant's continued complaints it does appear that the strata council was ready to formally address the tenant's complaints. In the e-mail of August 4, 2010 the strata council asked the tenant to put together a log of the disturbances so it could be considered and addressed at the next strata council meeting. Although the tenant did provide the requested information she did not remain in the rental unit to see if the strata council could resolve the problem.

Therefore, I find that the tenant's application cannot be granted. First of all, the landlord was not in a position where they could control or influence the owners of the offending unit and the landlord's only recourse was to complain to the strata council on the

tenant's behalf. I am satisfied the tenant complained to the strata council on her own behalf and accept that the landlord also approached the strata council on the tenant's behalf. While I acknowledge the tenant's position that the landlord did not do enough, I am not persuaded that the landlord could influence the strata council in these circumstances.

Since the landlord cannot take any measures to protect the tenant's right to quiet enjoyment due to disturbances caused by an owner in the residential property I find that the landlord is not responsible for paying the tenant compensation for loss of quiet enjoyment. I also find that the landlord is not responsible for compensating the tenant for moving expenses since the tenant decided to terminate her tenancy before waiting for an outcome from the strata council's apparent intent to become involved in August 2010.

In the circumstances, I find that the only remedies available to the tenant's was to either end her tenancy agreement or continue the process of involving the strata council in reaching a resolution to the dispute with the owner of the other unit.

### Conclusion

The tenant's application has been denied.

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 02, 2011.

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Residential Tenancy Branch