



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      OLC, FF

### Introduction

This matter dealt with an application by the tenant to obtain an Order for the landlord to comply with the *Residential Tenancy Act*, Regulation or tenancy agreement and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on February 02, 2011. The landlords' agent confirmed receipt of the hearing documents.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

### Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulation or tenancy agreement?

### Background and Evidence

Both Parties agree that this month to month tenancy started on November 01, 2003. The tenant pays a subsidized rent of \$303.00 per month on the first day of each month.

The tenant testifies that the tenant residing in the unit above him makes constant noise which disturbs his sleep. The tenant states this has been ongoing for two years. The tenant claims the upstairs tenant will bang on the floor, make loud noise late at night and drops things on the floor. The tenant states this other tenants wife also gets up around five am which also wakes the tenant in the early hours of the morning. The tenant claims this noise is over and above normal living noise and he thinks much of it is done on purpose to disturb him. The tenant states there have been occasions when he has had to sleep elsewhere in order to get a good night's sleep because he is now so tired.

The tenant testifies that he has complained to the landlord in writing and verbally many times. He states the landlord has spoken to the other tenant and the noise will stop for a few days but then starts up again. The tenant states that in December, 2010 two other tenants also wrote letters of complaint about this to the landlord.

The landlords' agent testifies that the tenants' complaints have been investigated and they have visited the other tenant to ask about the alleged noise. The landlords' agent states that they have found no evidence of noise and explain that the building is a wooden frame three story building which creaks in high winds.

The landlords' agent states they have taken the tenants complaints seriously but have found nothing to substantiate any of his complaints. The landlords' agent states that the other tenant upstairs is now becoming upset with their investigations. The landlords' agent suggests the tenant contacts the building manager whenever he has an issue with noise and if it is out of hours his call will be transferred to the building managers' cell phone so he can go and investigate the complaint at the time it is happening. The landlord gave out the building managers' telephone number to the tenant during the hearing. The landlords' agent states she believes this is the only way to confirm his complaints.

The landlords' agent testifies that the unit upstairs has carpeting on the floor but because of the nature of the building everyday noise will travel through the building. The landlords agent states they have asked other tenants living next door if he has been disturbed but were told he has only heard occasional noise from the tenants upstairs.

The landlords' agent states the tenant was advised by the manager to bring any witnesses to the hearing to give evidence on his behalf. The tenants support worker confirms this conversation.

The tenant states the landlords did not advise him to bring witnesses.

### Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. In this case I find the burden of proof lies with the tenant as the person making the claim. The tenant seeks an Order for the landlord to comply with the *Act* and to take action to prevent any further disturbances to him from the tenants living above his unit. The landlords argue that they have investigated every complaint from the tenant and have found nothing to substantiate his claims.

While I sympathize with the tenants' lack of sleep it is my decision that he has not met the burden of proof in this matter to show that he is being disturbed more than normal living noises would allow for. He has also failed to show that the landlord has failed to take appropriate action to prevent further disturbances.

In light of the tenants lack of evidence to support his claim I must dismiss his application but give him leave to reapply in the event he can provide proof to support his claim in the event the alleged noise continues.

As the tenant has been unsuccessful he must bear the cost of filing his own application.

Conclusion

The tenants' application is dismissed with 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: February 21, 2011.

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Residential Tenancy Branch