



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding EUROCAN INDUSTRIES INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC FF

### Preliminary Issues

The parties confirmed the respondent that was named on the Tenants' application was an employee or Agent of the property management company who is the corporate Landlord. Accordingly, the style of cause was amended to include the corporate Landlord's name, in accordance with section 64 (3)(c) of the *Act*.

### Introduction

This hearing dealt with an Application for Dispute Resolution filed on February 5, 2013, by the Tenants to obtain an Order to have the Landlord comply with the Act, regulation or tenancy agreement and to recover the cost of the filing fee for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's evidence. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

### Background and Evidence

The Tenants submitted documentary evidence which included, among other things, copies of: their written statement; the tenancy agreement; and the tenancy rules and regulations.

The Landlord submitted documentary evidence which included, among other things, copies of: the photographs of the rental unit located directly above the Tenants' unit; the Landlord's written statement; and witness statements from neighboring tenants.

The parties confirmed they entered into a month to month tenancy that began on June 1, 2004. Rent was initially \$900.00 per month plus parking and is currently \$974.00 plus \$20.00 parking payable on the first of each month. On April 30, 2004 the Tenants paid \$450.00 as the security deposit.

The Tenant advised that in early December 2012 she and her son could hear some kind of mechanical noise while in their bedrooms. This noise was what she described as being a "vibration and humming noise". Her son discussed the noise with their Landlord on December 12, 2012. Then on December 22, 2012 they met with the tenant from directly above them and found out that the noise was coming from a fan that she leaves running all night long.

The Tenant described the rental building as being an older wood frame building. She said the upper unit has a similar floor plan and the upper bedrooms are directly above the bedrooms in their unit. She read her son's statement into evidence which indicated the noise is affecting his ability to sleep and he would like it to stop. She argued that he has had to sleep on the couch to avert the noise.

The Tenant confirmed that they have never put their request in writing; however they have had several conversations with the Landlord about this issue. They know that the Landlord has provided the other tenant with a pad to place under the fan and that she has moved the location of the fan from the dresser, to a soft chair, and now on top of boxes, but they have not noticed a change. They are of the opinion that the continual operation of the fan is a breach of their quiet enjoyment and a breach of their tenancy rules which states that a tenant must not cause or allow loud conversation or noise to disturb the quiet enjoyment of another occupant. They are requesting that the Landlord comply with the Act and make sure the fan is turned off between the hours of 11:00 p.m. and 8:00 a.m.

The Landlord submitted that the building was approximately 45 years old, three stories, and wood frame construction on cement floors with shiplap decking. He confirmed that it is not sound proof and noise travels throughout it. He advised that the Tenants' unit is on the first floor built on a concrete slab so there is no vibration from the parking area.

The Landlord stated that he has tried to resolve this issue in many ways; however none are ever to the satisfaction of these Tenants. He noted that this issue involves another tenant's use of a regular table house fan. The other tenant even went out and purchased a brand new fan to appease these Tenants which the Landlord believes was beyond what was required of her. In addition to the new fan, he provided the other tenant with a foam pad and requested that she change the surface it sat on, which she has done twice.

The Landlord advised that he suggested the Tenants mitigate the situation by using ear plugs but they refused arguing that they would be concerned about ear infections. He also offered them a vacant unit, for lower rent located on the second floor, but they refused that as well. He argued that these Tenants have a hyper sense of hearing and that their reactions against other tenants are boarding on harassment. He referenced the witness statements he provided in his evidence and argued that these Tenants think nothing of disturbing other tenants yet they continuously complain about regular sounds as if they are not normal.

In closing the Tenant confirmed they chose not to remedy the situation by using ear plugs or by moving. She argued that they have the best view in the building and she was awaiting surgery so they would not consider moving as an option.

### Analysis

Section 28 of the Act provides that 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.

[my emphasis added]

As explained to the parties during the hearing, the Act and the tenancy rules stipulate a tenant is entitled to freedom from **unreasonable** disturbance. The Act, the tenancy rules, nor the Residential Tenancy Policy Guideline 6: *Right to Quite Enjoyment*, define the terms "unreasonable disturbance".

Without a formal test for determining an unreasonable disturbance I have turned to a reasonable persons test in determining that noises generated from the normal operation of equipment used in day to day living, such as flushing toilets, heating and air conditioning units, running of household appliances, table top fans, or computers, music, or televisions at reasonable volume levels, are defined as being reasonable disturbances. That being said, disturbances above regular volume levels, such as loud music, banging from a base sound generating from video games, televisions or stereos, excessive slamming, banging, stomping, yelling, or screaming noises, would constitute an unreasonable disturbance. When tenants occupy a multi-unit wood framed buildings there are normal sounds or noises that are generated from day to day living which can be heard throughout the building at all hours of the day or night.

Upon consideration of the foregoing, and notwithstanding the Tenants' arguments that their sleep has been interrupted, I find there to be insufficient evidence to prove they have suffered a loss of quiet enjoyment due to an **unreasonable** disturbance. I further find the Landlord has taken reasonable steps to resolve this matter and the Tenants refused to enact or accept the remedies suggested and offered to them.

The Tenants have not been successful with their application; therefore, they must bear the burden of the cost to bring this application forward.

Conclusion

I HEREBY DISMISS the Tenants' application; 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: March 13, 2013

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Residential Tenancy Branch

