



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OLC, FF

### **Introduction**

This hearing was convened in response to an application by the tenant seeking an Order for the landlord to comply with the Act and recover their filing fee for this application.

Both parties participated in the hearing with their submissions, and testimony during the hearing. The landlord acknowledged receiving the tenant's evidence 2 days before this hearing – relevantly and effectively comprised of one hand-written letter from a visitor to the residential property. The landlord was given opportunity to orally respond to the late evidence, but determined they would also seek additional information as a result. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

### **Issue(s) to be Decided**

Should the landlord be Ordered to Comply with the Act.

### **Background and Evidence**

The relevant testimony in this matter is as follows. The tenant provided the landlord with a written complaint dated March 05, 2013; stating an unreasonable quantum of noise is transferring to the tenant's rental unit from the unit above them and that the noise occurs a various times of day and night. The tenant claims the noise has not since appreciably abated. The tenant submits that visitors to their unit have also experienced the noise and one visitor describes in respect to one attendance as "unacceptable noise". The tenant's witness in the hearing describes hearing sounds from audio equipment and that in their determination the sound intrudes into the tenant's unit, and that it would be disturbing to the applicant. The landlord testified that they have tried to resolve the matter by approaching the other tenant above the applicant, whom denied causing unreasonable levels of sound / noise. The landlord further testified that to date they have not been able to substantiate the tenant's concerns so as to address them, and their testimony was that they may not substantiate

the concerns and that the tenant's concerns may not have merit; with the result that they may not have cause to address the issues in dispute. The landlord also testified they continue to investigate the tenant's concerns and requires more time. The tenant did not testify as to how the landlord should resolve the noise issue.

### **Analysis**

Although the tenant has not applied as such, I find the tenant is claiming their right to quiet enjoyment of their rental unit, as provided by Section 28 of the Act, is being breached by unreasonable noise from the rental unit above them and that the landlord is not taking action to rectify the breach. I find that I cannot Order the landlord to take specific action toward another tenant of the residential property. However, I find that the landlord is effectively in possession of certain evidence from the tenant and unless the landlord thinks the tenant is fabricating the evidence it is available to the landlord to rely on that evidence and take action(s) available to them with a view to ensuring the applicant's right to quiet enjoyment. Such action may or may not require drastic measures available under the Act. I accept the landlord requires some additional time to better inform themselves of the matters in dispute. However, if the noise the tenant claims is intrusive does not abate within 10 days of the date of this Decision, the tenant is at liberty to apply for dispute resolution seeking compensation for loss equivalent to a reduction in the value of the tenancy – a rent reduction as a result. I note the tenant's particular application form did not reflect such an option, therefore, I am satisfied the circumstances do not warrant the filing fee being collected in the event the tenant files a subsequent application in respect to his matter. I Order the filing fee for making that application is not payable and limited to that application. As a result of all the above, I **dismiss** the tenant's application, with leave to reapply.

### **Conclusion**

The tenant's application **is dismissed**, with leave to reapply as Ordered.

**This Decision is final and binding on both parties.**

*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: April 11, 2013

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Residential Tenancy Branch