



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Sunnyside Villas Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC; OLC; FF; O

### **Introduction**

This is the Tenant's application for compensation for damage or loss under the Act, Regulation or tenancy agreement; an Order that the Landlord comply with the Act, Regulation or tenancy agreement; to recover the cost of the filing fee from the Landlord; and other Orders.

The parties gave affirmed testimony at the Hearing.

### **Preliminary Matters**

The Tenant's Application for Dispute Resolution was corrected to add the corporate Landlord's name. The other two Respondents named in the Tenant's Application are the Landlord's agents.

The Tenant testified that she has given her notice to move out of the rental unit, effective July 31, 2013.

The Tenant's Application for Dispute Resolution indicates that she is seeking "other" relief; however, she did not provide sufficient details in her Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the Applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenant's application is dismissed.

### **Issues to be Decided**

- Is the Tenant entitled to compensation pursuant to the provisions of Section 67 of the Act?
- Should the Landlord be ordered to comply with the Act, regulation or tenancy agreement?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on July 1, 2012. The Tenant's monthly rent is subsidized pursuant to an agreement with BC Housing. Market rent for the rental unit is \$748.00. The Tenant is subsidized \$608.00 per month and pays \$140.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$150.00 at the beginning of the tenancy.

The Tenant seeks compensation in the amount of \$70.00 for loss of peaceful enjoyment of the rental unit due to her noisy neighbours who live directly above her. She stated that she wrote to the Landlord, outlining the problem on July 24, 2012, and that she has written a total of 6 letters of complaint since she moved into the rental unit. The Tenant stated that for 4 weeks straight, her neighbours above had a free standing heater hooked up in their bedroom, which vibrated so loudly that she was forced to sleep outside of her bedroom in order to get some sleep. Copies of the Tenant's letters of complaint were provided in evidence.

The Tenant stated that she has tried to work things out with her upstairs neighbours, and that things are quiet for a while and then start up again. She is frustrated that the Landlord did nothing until after she filed her Application for Dispute Resolution. The Tenant stated that the Landlord's agent came to the rental unit at 4:00 in the afternoon on June 4, 2013, to monitor the noise levels but that the investigation was not done properly, because the offending noise happens late at night. The female neighbour has long baths until after midnight. She stated that the neighbours leave the TV on and talk loudly into the night.

The Tenant stated that the female neighbour told her that she was making the noises so that the Landlord would allow them to move to another unit.

The Landlord's agent stated that he does not dispute that the upstairs occupants are disturbing the Tenant. He stated that the male neighbour moves around with the aid of a wheelchair and that his wife is a hoarder. The Landlord's agent stated that the Tenant's neighbours want to move to a 2 bedroom unit so they will have more room to store their junk. He believes they are causing noise so that they will be allowed to move. The Landlord's agent stated that the Landlord has a policy that disallows transfers within the rental property. The Landlord's agent stated that the only available 2 bedroom unit is a unit with an apartment below it, and therefore even if the Tenant's neighbours were moved, the noise problem would continue.

The Landlord's agent stated that he has no argument with the Tenant's application for compensation.

## **Analysis**

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

The onus is on the party applying for compensation to provide sufficient evidence to prove their claim, on the balance of probabilities.

Section 28 of the Act requires a landlord to provide a tenant with quiet enjoyment, including freedom from unreasonable disturbance. Based on the testimony of both parties, I find that the Landlord did not comply with the provisions of Section 28 of the Act and that the Tenant suffered a loss as a result of the Landlord's breach. Therefore I grant the Tenant's application for compensation in the amount of \$70.00.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$70.00 from rent due July 1, 2013. Rent for the month of July will be \$70.00.

The Landlord is hereby ordered to comply with Section 28 of the Act.

**The Tenant 's application has merit and I find that she is entitled to recover the cost of the filing fee from the Landlord. A Monetary Order in the amount of \$50.00 accompanies this Corrected Decision, representing recovery of the filing fee.**

## **Conclusion**

The Tenant has established a monetary award in the amount of **\$70.00** pursuant to the provisions of Section 67 of the Act. Further to the provisions of Section 72 of the Act, **the Tenant's monetary award in the amount of \$70.00 may be deducted from July's rent due to the Landlord.**

The Landlord is hereby ordered to comply with Section 28 of the Act.

**I hereby provide the Tenant with a Monetary Order in the amount of \$50.00 for service upon the Landlord. This Order may be filed in the Provincial Court of British Columbia (Small Claims) and enforced as an Order of that Court.**

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: June 19, 2013

**CORRECTED July 8, 2013**

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Residential Tenancy Branch