



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ATIRA PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: O RR

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order that the landlord ensure his privacy and reasonable enjoyment pursuant to section 28 by controlling the behaviour of the tenants of a nearby unit and their guests;
- b) A monetary order for a rent reduction of \$30 a month until the landlord takes the necessary steps to ensure his quiet enjoyment.

### **SERVICE**

I find that the landlord was served with personally with the Application for Dispute Resolution hearing package. He stated they received it.

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

Has the tenant proved on the balance of probabilities that the landlord through act or omission has failed to ensure his reasonable enjoyment and if so, that he is entitled to a rent rebate?

### **Background and Evidence:**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions.

It is undisputed that the tenancy commenced in March 2009, rent was \$455 per month but is now \$375 per month under a program with BC Housing. A security deposit was paid but neither party could recollect the amount. It is undisputed that there have been noise and other complaints about other tenants from this tenant, particularly about a nearby tenant who appears to have persons yelling up at his window and whistling in the early hours of the morning. The landlord said that their management company houses hard to house tenants and they have many complaints which are actively managed by staff who are on duty 24 hours a day. He said he has always responded to complaints of this tenant, he has issued many warning letters and has seen significant

improvement. The tenant agreed that things have improved in the past weeks, cameras have been installed as he requested, noise from music etc. had decreased but he said a person was whistling again at 3 a.m. last night up to unit 213's window.

The manager noted the details of the whistler, his description and that he had a BMX bike and was a frequent visitor to unit 213. The manager said that this was the first he had heard of this but he had spoken to unit 213 several times, written warning letters and had promises from him that this behaviour would stop. He noted that unit 213 had put in a big window air conditioner to discourage persons from yelling up to his window. The manager promised that a Notice to End Tenancy would be issued to unit 213 if the offending behaviour continued. The manager submitted extensive logs of staff showing complaints and responses over the past months. In the logs is a report of police being called due to an altercation between the applicant and a female tenant; the applicant/tenant said he thought this female was a prostitute and she had punched him when he confronted her on the issue.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

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**Analysis:**

Section 28 of the Act sets out the tenant's right to quiet enjoyment.

Protection of tenant's right to quiet enjoyment:

*28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

*(a) reasonable privacy;*

*(b) freedom from unreasonable disturbance;*

Page 6 of the Residential Tenancy Guideline explains further that "inaction by the landlord which permits or allows ...interference by an outside or external force which is within the landlord's power to control" may be a basis for finding of a breach of quiet enjoyment. Examples of such interference include "unreasonable and ongoing noise".

I find in this case the weight of the evidence is that there has not been a serious breach of the tenant's quiet enjoyment due to any act of omission of the landlord to control or evict other tenants. The weight of the evidence is that there are many problems in the building but that the landlord responds speedily to each complaint and makes every effort to ensure the quiet enjoyment of residents in the building. The manager's evidence is well supported by the detailed logs covering many months. Also, his evidence is supported by the tenant's agreement that things have improved in terms of

ongoing noise and that the landlord has now installed surveillance equipment. In the hearing, the landlord also agreed to speak to unit 213 again and issue a Notice to End Tenancy if he continued to have visitors yelling or whistling up at his window and so disturbing the peaceful enjoyment of this tenant

Therefore, I find the tenant has not proved on a balance of probabilities that the landlord is failing through act or neglect to ensure his quiet enjoyment. . I find the landlord proactive in the management of the building. Therefore, I find the tenant is not entitled to a rebate of rent for loss of quiet enjoyment.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply. Filing fees were not paid so are not awarded.

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: August 06, 2013

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Residential Tenancy Branch

