



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Klahanee Park Housing Society  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC; OLC; 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; and "other" relief.

The parties gave affirmed testimony at the Hearing.

It was determined that the Notice of Hearing documents and copies of the Tenant's documentary evidence were mailed to the Landlord, by registered mail, sent July 31, 2013. The Tenant also provided the Residential Tenancy Branch with late evidence, but did not serve the Landlord with the evidence and therefore it was not considered. The Tenant was invited to provide oral testimony with respect to the late evidence.

The Tenant acknowledged receipt of the Landlord's documentary evidence.

### **Preliminary Matters**

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 she was 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**

- Should the Landlord be ordered to provide the Tenant with quiet enjoyment?
- Is the Tenant entitled to compensation for loss of quiet enjoyment?

### **Background and Evidence**

The rental unit is situated in a subsidized housing complex. The Tenant lives in the part of the complex that is reserved for seniors. This tenancy began on February 1, 2012. Monthly rent is \$320.00, due on the first day of each month. A security deposit in the amount of \$328.00 was paid at the beginning of the tenancy.

#### **The Tenant gave the following testimony:**

The Tenant testified that she has been wakened each night by her downstairs neighbour since she moved into the rental property. She stated that she first complained to the Landlord's agent on February 2, 2012, but nothing was done.

The Tenant stated that she put her complaints in writing on July 11, 2013. She stated that the former administrator answered her complaint on or about July 15, 2013, saying that she felt the problem could be resolved with a conversation between the Tenant and the downstairs neighbour.

The Tenant testified that the Landlord's agent DE took over from the former administrator after she retired on July 15, 2013. The Tenant stated that she not believe that DE is treating her fairly either.

When asked to describe the noise that was waking her every night, she stated it was "more of a feeling.... A sensation of movement under the bed.... a mild vibration on the floor". The Tenant testified that on one occasion she was awoken by a putrid odour coming from the balcony; something that smelled like fish fertilizer. She stated that she was able to go back to sleep and did not check to see if someone was on the balcony.

#### **The Landlord's agents gave the following testimony:**

DE stated that it is standard procedure that all complaints must be in writing, and that there is a clause in the Rules and Regulations attached to the tenancy agreement confirming this procedure. He submitted that the Tenant did not provide the Landlord with a written complaint until July 11, 2013. DE testified that the Landlord acted immediately on the Tenant's complaint and found it to be groundless.

DE testified that the Landlord suggested that the parties get together to talk about the situation, but on July 30, 2013, the Tenant filed her Application instead. DE submitted that the Tenant did not allow the Landlord enough time to try to address her issues.

MP testified that the occupant who was living below the Tenant in February, 2012, moved out and that a new occupant took possession on June 1, 2013. She stated that the rental property is an old wooden structure.

The Tenant gave the following reply:

The Tenant submitted that she did not put her complaint in writing earlier because she was pre-occupied. She stated that when she moved in, the movers stole 17 of her cartons, and that there was no Welcome Wagon.

The Tenant stated that she suspects the former occupant and the new occupant of the suite below are working together. She said the disturbances happen at regular intervals and she believes one of them acts during the daytime hours and the other at night.

The Tenant suspects that they are using some kind of a weapon repeatedly.

### **Analysis**

To prove a loss of quiet enjoyment and have the Landlord pay for the loss requires the Tenant to satisfy four different elements:

1. Proof that the loss exists,
2. Proof that the loss occurred due to the actions or neglect of the Landlord in violation of the Act, regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss, and
4. Proof that the Tenant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss.

I explained to the Tenant that I find she has not satisfied the requirements of the test as set out above. I have no doubt that the Tenant is waking during the night; however, I find that the Tenant has failed to provide sufficient evidence that her sleeplessness is caused by the actions of the occupant below her. The Tenant was vague in her description of the disturbances, and I find her allegation that the former occupant and the new occupant are working in collusion highly improbable.

Therefore, the Tenant's application is dismissed.

### **Conclusion**

**The Tenant's application is dismissed.**

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: September 09, 2013

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Residential Tenancy Branch

