



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC Housing  
and [tenant name suppressed to protect privacy]

## **DECISION**

### Dispute Codes:

MNDC, ERP, RP, OLC, PSF, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to make repairs to the rental unit; for an Order requiring the Landlord to provide services or facilities required by law; and for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act)*.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents he wishes to rely upon as evidence were sent to the Landlord, via registered mail, on April 07, 2014. The Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

The Landlord submitted no evidence.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

### Issue(s) to be Decided

Should I issue an order requiring the Landlord to make repairs to the rental unit, requiring the Landlord to provide services or facilities, or requiring the Landlord to comply with the *Act* or the tenancy agreement; and is the Tenant entitled to compensation for loss of quiet enjoyment?

### Background and Evidence

The Landlord and the Tenant agree that this tenancy began on March 01, 2011 and that the Tenant is currently paying subsidized rent of \$383.00.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit for a variety of reasons. In his written submission the Tenant indicates this claim relates, in part, to "repeated unwarranted threats of eviction". At the hearing the Tenant withdrew his claim for compensation for this issue.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the residential complex was under construction for a portion of his tenancy. He stated that for the first 6-12 months of his tenancy the residential complex was under construction.

The Tenant stated that scaffolding was constructed in front of his patio door, which is the door that he normally uses for access/egress. He stated that it was difficult for him to access his unit through this door, although he could do so by crawling over the bars. He stated that he has mobility issues and that he could not use what would normally be considered the front door to the rental unit without experiencing significant pain, as he had to use stairs to access this door. He stated that he was unable to use his mobility aid for an extended period of time, as he could not get it in/out of the unit through the patio door.

The Tenant stated that he asked an on-site manager to provide clear access to his rental unit through the patio door, but he did not respond to that request. He stated that he eventually modified the scaffolding himself so that he could use the patio door.

The male Agent for the Landlord agreed that extensive renovations were made to the exterior of the rental unit and that scaffolding was erected in front of the Tenant's patio door. He estimates the scaffolding was in place for 4-6 months. He stated that it is possible the problem was mentioned to an on-site manager but he has no record of the Tenant requesting a modification to the scaffolding.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the Landlord has entered his rental unit without proper authority. The Tenant stated that sometime in September of 2011 a person whom he believes was an employee of the Landlord entered the rental unit without knocking and without prior notice, for the purposes of repairing a bathroom mirror. He stated that he reported this incident to an on-site building manager. He stated that there have been unlawful entries on other occasions as well, although he cannot recall the details of those entries.

The male Agent for the Landlord stated that he has no knowledge of this incident or of any occasion when the rental unit has been entered without lawful authority.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because he has been disturbed by the occupant living above him since she moved into the residential complex. These disturbances include excessive noise; spitting from the upper unit; smoking in the upper unit; and throwing of cigarette butts, tar/ash, and a variety of debris out of the upper unit. The Tenant stated that he has complained about these disturbances on a daily basis.

The male Agent for the Landlord stated that Tenant has made numerous complaints about the occupant of the upper rental unit after she moved into the rental unit on November 01, 2012, although he did not complain on a daily basis. He stated that the occupant living above him was not an ideal tenant; that he spoke with her on several occasions in an attempt to address the Tenant's concerns; that he provided her with written warnings; and that the Landlord eventually ended the tenancy on March 31, 2014, in part because of the Tenant's concerns.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because he has been disturbed by an elderly female occupant of the residential complex who harasses him by following him, yelling at him, accusing him of abusing animals, and threatening him with physical harm. He stated that he reported his concerns to the police in August of 2012 and January of 2013. He stated that the police became involved in August of 2012; that the police were again involved in January of 2013; and that the harassment did not continue after January of 2013.

The male Agent for the Landlord stated that he was aware of the conflict between the Tenant and this elderly female occupant and that he understood the matter had been resolved when the police intervened in August of 2012. He stated that in January of 2013 he became aware that the parties were still having conflict but that the police were able to resolve the matter by telling the parties to avoid each other.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because he has had insects and rodents in the rental unit. The Tenant stated that when he moved into the rental unit he had ants; that the ants returned again in 2012; that he treated the infestation himself; and that he advised an on-site building manager that he had experienced, and had resolved, the problem. The Tenant stated that he believes mice entered his rental unit through his open patio door; that he believes he resolved the problem with the use of traps; and that he never reported the problem to the Landlord until after he had resolved the problem.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because there is mould in his rental unit. He stated that he has no evidence to support this claim. The male Agent for the Landlord stated that he is not aware of mould in the rental unit, although the repairs in 2011 were to resolve water damage to the exterior of the complex.

The Tenant is seeking compensation for loss of quiet enjoyment of the rental unit, in part, because the front door intercom did not function properly during this tenancy. He stated that the intercom has not worked properly since the beginning of the tenancy; that the Landlord posted a notice declaring that the system would be repaired on March 03, 2014; and that it was finally repaired sometime in March of 2014. He stated that he eventually installed a wireless intercom at the front door.

The male Agent for the Landlord stated that the intercom at the front door was replaced in 2011, as it was old and did not work well. He stated that the Landlord had intermittent problems with the newly replaced intercom system and that it was replaced with a second system. He stated that for approximately two months tenants could not use the intercom system to grant remote access to guests, although the intercom could be used to communicate with guests.

The Tenant stated that his application for an Order requiring the Landlord to make repairs related to the intercom system. As it is no longer in need of repair, the Tenant withdrew this aspect of his claim.

The Tenant is seeking an Order requiring the Landlord to clean the garden and common area outside of his rental unit, which he contends has cigarette butts and other litter strewn about. He is also seeking an Order requiring the Landlord to clean the stains on the exterior of the wall near his rental unit. The Tenant submitted photographs of the stains on the wall, which he stated are still present. The Tenant stated that he did not submit a photograph that shows how much garbage is currently on the ground outside his rental unit.

The male Agent for the Landlord stated that he is willing to inspect these areas and to clean them if necessary.

### Analysis

Section 28 of the *Residential Tenancy Act (Act)* stipulates that a tenant is entitled to quiet enjoyment of the rental unit.

On the basis of the undisputed evidence, I find that scaffolding was erected in front of the Tenant's patio door, which interfered with the Tenant's ability to use this door. Although this was not the only means of accessing the rental unit, I find that the scaffolding did interfere with the Tenant's quiet enjoyment of the rental unit. In reaching this conclusion I was influenced by the Tenant's testimony that he has mobility issues; that he uses the patio door as his primary access/egress point; that it is painful to use the front door to the rental unit; and that he had difficulty getting his mobility aid in and out of the rental unit while the scaffolding was in place.

Granting compensation for loss of quiet enjoyment is highly subjective. In these circumstances I find that \$100.00 for this inconvenience is reasonable. My decision not to grant greater compensation relates to the Tenant's testimony that he did not follow-up on his verbal request for the Landlord to modify the scaffolding. I find that his failure to follow up on his verbal request interfered with the Landlord's ability to offer assistance, by either modifying the scaffolding or providing the Tenant with an opportunity to store his mobility aid in another area of the complex. The Tenant's failure to follow up on his request for modifications also cause me to conclude that the modifications the Tenant made were sufficient to provide reasonable access/egress.

I find that the Tenant has submitted insufficient evidence to show that the Landlord has entered the rental unit without lawful authority. In reaching this conclusion I note that it is entirely possible that the Landlord posted notice of their intent to enter the rental unit in September of 2011, in which case the entry would be in accordance with section 29 of the *Act*, even if the Tenant did not locate the notice that was posted.

I note that this incident occurred in September of 2011. Given the passage of time, I find it unreasonable to expect the Landlord to be able to provide details of the notice to enter. In the absence of evidence that clearly shows the Landlord entered without proper authority, I dismiss the claim for compensation for this incident.

Residential Tenancy Branch policy guidelines suggest that a tenant may be entitled to compensation if a tenant's right to the quiet enjoyment of the rental unit is disturbed by an outside force and it is within the landlord's power to prevent the disturbance. I concur with this guideline. In my view, a landlord is obligated to take reasonable steps to investigate disturbance complaints and, if necessary, to end the tenancy of a person who is disturbing other occupants.

I find that the Landlord did take reasonable steps to address the Tenant's concerns about the occupant living above him, by first speaking with the occupant, by providing her with written warnings, and by eventually ending her tenancy. Although it did take the Landlord 17 months to end this tenancy, I find that amount of time to be reasonable given the nature of the disturbances. In reaching this conclusion I was influenced by the fact that I consider many of the complaints made by the Tenant to be trivial, including a bamboo blind blowing in the wind and striking the building and the sound of someone clearing their throat. As the Landlord took reasonable measures to respond to the disturbances caused by the occupant living in the upper rental unit, I find that the Landlord is not obligated to compensate the Tenant for disturbances caused by this occupant.

I find that the Landlord acted reasonably when the Landlord relied on the police to resolve the conflict between the Tenant and an elderly female occupant of the residential complex. A landlord cannot be expected to manage conflicts between all residents in a residential complex, although a landlord may be required to end a tenancy of an occupant who is primarily responsible for a conflict and who will not refrain from creating conflict. In these circumstances I find that the conflict between the Tenant and the elderly occupant was resolved after the police spoke with the parties on two occasions. I find it was reasonable for the Landlord to rely on the police intervention in this matter and to not interfere with the police investigation of the matter. As the matter was resolved by the police within a reasonable amount of time, I find that the Landlord is not obligated to compensate the Tenant for disturbances caused by this occupant.

On the basis of the testimony of the Tenant, I find that he experienced a problem with ants in the rental unit in 2011 and 2012 and that on both occasions he treated the problem before he informed the Landlord of the infestation. On the basis of the

testimony of the Tenant, I find that he experienced a problem with mice in the rental unit and that he treated the problem before he informed the Landlord of the infestation.

Ant and mice infestations are not uncommon and, typically, a tenant is not entitled to compensation as a result of an infestation unless it can be established that the infestation is a result of poor maintenance. The Tenant submitted no evidence to cause me to conclude that the ant or mice infestation was the result of inadequate maintenance or a deficiency with the rental unit.

A landlord does, however, have an obligation to treat an insect/mice infestation and a tenant may be entitled to compensation for the infestation if the landlord does not respond appropriately to a report of an infestation. In these circumstances the Tenant treated the ant/mice infestation before they were reported to the Landlord and the Landlord did not, therefore, have the opportunity to treat the infestation. As there is no evidence that the Landlord failed to comply with his obligation to treat an infestation, I find that the Landlord is not obligated to compensate the Tenant for the infestation.

I find that the Tenant has submitted insufficient evidence to corroborate his testimony that there was mould in the rental unit or to refute the Agent for the Landlord's testimony that there was not mould in the rental unit. As the Tenant has failed to meet the burden of proving his right to quiet enjoyment was breached by the presence of mould, I find that he is not entitled to compensation relating to mould.

On the basis of the undisputed evidence, I find that the building intercom, which allows tenants to communicate with, and grant remote access to, guests, did not function properly. I find that this interfered with the Tenant's quiet enjoyment of the rental unit, given his mobility problems.

I find it difficult to accept the Tenant's testimony that the intercom system did not function properly at any point in the tenancy. If that were the case, it is highly unlikely that the Landlord would have posted the notice indicating the door would be repaired March 03, 2014. On the basis of the testimony of the Agent for the Landlord, however, I find that this system did not work properly for a continual period of approximately two months and that there were intermittent problems with the system in addition to that three month period.

Granting compensation for loss of quiet enjoyment is highly subjective, particularly in circumstances where it is unclear how long the problem has persisted. In these circumstances I find that \$100.00 for this inconvenience is reasonable. This is significantly higher than I would normally award for an inconvenience of this nature, however I find that the issue would have been particularly problematic for the Tenant, given his mobility issues.

I find that the Tenant has submitted insufficient evidence to show that the exterior of the building or common areas are in significant need of cleaning. On the basis of the photographs submitted in evidence, I find that this is a well maintained, reasonably

clean residential complex and I dismiss the Tenant's application for an Order requiring the Landlord to clean any area of the complex. While I accept there is some staining on the exterior wall of the complex and there is some minor garbage strewn on the ground, I find that the Tenant's standards exceed the requirements of the *Act*.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$200.00, for a breach of his right to quiet enjoyment. I authorize the Tenant to reduce one monthly rent payment by \$200.00 in full satisfaction of this claim.

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: May 30, 2014

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Residential Tenancy Branch

