



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mariner's Apt.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OLC and FF

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement and to recover the fee for filing this Application for Dispute Resolution.

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

On May 06, 2014 and May 21, 2014 the Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

On March 27, 2014, May 20, 2014, and May 21, 2014 the Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

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

Is there a need to issue an order requiring the Landlord to end the tenancy of another occupant of the residential complex?

### **Background and Evidence:**

The Landlord and the Tenant agree that the Tenant has made numerous complaints regarding noise emanating from suite 317, which is above her rental unit, some of which were made in writing in July of 2013.

The Landlord stated that after receiving those complaints he spoke with the occupant of 317 on several occasions and eventually served him with a Notice to End Tenancy. He stated that the Notice to End Tenancy was the subject of a dispute resolution proceeding on September 09, 2013, at which time the Notice was dismissed as it was served on an incorrect form.

The Tenant stated that after the hearing on September 09, 2013 she advised the Landlord that the noise was continuing on about 5-7 occasions. The Landlord stated that after September 09, 2013 he spoke with the Tenant about the noise on about 10 occasions, and on each occasion the Tenant told him that the situation had improved. The Tenant stated that the only time she told the Landlord that the situation was improved was after the patio door was replaced in August of 2013.

The Tenant stated that she is frequently disturbed by the occupant of suite 317 pacing and "stomping" at different times during the day, night, and early morning. She states that the occupant is not always noisy and that she believes the stomping is "purposeful". She stated that he often drops heavy objects, which sound like a billiard ball being dropped, that he scrapes his chair across the floor, and that he yells obscenities and "sighs" loudly. She stated that prior to new patio doors being installed in August of 2013, she was disturbed by him opening his patio doors at various times on the night.

The Landlord stated that he has listened outside of suite 317 on approximately 5 occasions after receiving noise complaints from the Tenant and he did not hear any noise. He stated that he has been inside the rental unit when she reported noise and he did not hear any noise. He stated that on one occasion he went to the suite 317 after receiving a noise complaint and he believes he woke the occupant of that unit from a deep sleep.

The Landlord submitted a letter in which he reported being inside the rental unit when the Tenant asked him if she could hear the noises from suite 317, which he did not. He stated that shortly after leaving her rental unit he came upon the occupant of 317, who was returning home after a walk.

The Landlord submitted a letter from the assistant manager, who declared that she has spent a lot of time in the rental unit to see if she can hear noise from suite 317 and she has not heard anything that corroborates the Tenant's reports. She stated that on one occasion she went to the suite 317 and knocked several times before the occupant answered, at which time he told her he had taken sleeping pills.

The Landlord stated that they did get at least one verbal complaint from the previous occupant of unit 217, who reported that the occupant of 317 was "loud on his feet".

The Landlord stated that he is willing to serve the occupant of 317 with a Notice to End Tenancy if the Tenant can provide sufficient evidence to corroborate her claims that the noise is unreasonable. He stated that he has not served the occupant of 317 with a second Notice to End Tenancy as he has not been able to corroborate her claims.

The Landlord submitted a letter from the occupant of 317, dated August 17, 2013, in which he refers to “two letters of support from others, who would not otherwise have complained”. He points out that the authors of the letter state that they did not complain about noise, which he speculates is because they “heard nothing worth complaining about”.

The Landlord submitted a letter from the occupant of 317, dated March 27, 2014, in which he reports being disturbed by the Tenant banging on his ceiling.

Analysis:

Section 28 of the *Act* stipulates that a tenant is entitled to the quiet enjoyment of a rental unit, free from unreasonable disturbances. A landlord has an obligation to prevent occupants of a residential complex from unreasonably disturbing others if it is within the landlord’s power to do so. This would include ending the tenancy of an unreasonably noisy occupant if the occupant is unreasonably disturbing another tenant.

I find that the Tenant has submitted insufficient evidence to establish that the occupant of unit 317 is being unreasonably noisy. While I accept the noise from unit 317 is disturbing the Tenant, I am unable to conclude whether that is because the occupant of unit 317 is being unreasonably noisy or because the Tenant simply has a low tolerance for noise.

In reaching this conclusion, I was influenced by the nature of the noise disturbances being reported by the Tenant. Many of the noises she describes, such as pacing, scraping chairs, and opening patio doors are normal daily living activities and are unlikely to be considered unreasonable, regardless of the time of day.

In reaching this conclusion, I was influenced by the Landlord’s testimony that they have been unable to corroborate the Tenant’s concerns. Given that on two occasions the Landlord or his agent attended the rental unit after receiving a noise complaint and appeared to have awoken the occupant of 317 from his sleep, I find it reasonable for the Landlord to question the veracity of the Tenant’s reports. Given that on one occasions the Tenant reported hearing noises when it appears the occupant was not home, I find it reasonable for the Landlord to question the veracity of the Tenant’s reports.

As the Tenant has not provided the Landlord with sufficient evidence to establish the occupant of unit 317 is being unreasonably noisy, I find that the Landlord does not have sufficient grounds to end the tenancy of that occupant. The Landlord has spoken with the occupant of 317 to inform him of the complaints and, in the absence of grounds to end the tenancy, I find that he has made a reasonable attempt to address the Tenant’s complaints. I therefore dismiss the Tenant’s application for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

I specifically note that all tenants in a residential complex have the right to the quiet

enjoyment of a rental unit. This includes freedom from unsubstantiated complaints. The Tenant should be aware that if she continues to be disturbed by the noise in unit 317 she should be prepared to provide the Landlord with evidence that corroborates her complaints.

I find that the Tenant's Application for Dispute Resolution is without merit and she is not entitled to recover the fee for filing this Application.

Conclusion:

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

