



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

OLC

### Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has applied requesting the landlord be ordered to comply with the Act.

The tenant provided affirmed testimony that on August 12, 2014 he placed copies of the Application for Dispute Resolution and Notice of Hearing in the landlord's business mail box which is in the rental unit building. The landlord told the tenant he was busy on the day of the hearing and could not attend.

These documents are deemed to have been served in accordance with section 89 and 90 of the *Act*; however the landlord did not appear at the hearing.

### Issue(s) to be Decided

Must the landlord be Ordered to comply with the Act?

### Background and Evidence

The tenant has lived in the building for 3 years. He lives on an upper floor, at the end of the building.

For the past year the tenant has suffered repeated disturbances during the night. These disturbances are caused by the occupant of the unit directly below the tenant's unit. Sometimes the occupant bangs on the wall or ceiling every half hour; at other times he bangs every hour.

In May 2014 the tenant provided the landlord with a list of dates and times of the disturbances. The landlord said that other neighbouring occupants have not reported problems. The occupant has left a note for the tenant, acknowledging the problems; this note was given to the landlord.

The tenant said he has asked the caretaker if he can sleep in a storage room; as he is so desperate for uninterrupted sleep.

The tenant wants the landlord to be Ordered to comply with the Act; directing him to take action and put a stop to the disturbances.

### Analysis

When making a claim for damages under a tenancy agreement or the Act, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or Act, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

From the evidence before me it is apparent that the tenant is suffering repeated disturbance caused by the occupant of the unit below him. As the landlord failed to attend this hearing to dispute the tenant's submission I find that provides tacit agreement that the tenant's complaint is valid.

Section 28 of the Act provides:

### ***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;***
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [landlord's right to enter rental unit restricted];*
- (d) use of common areas for reasonable and lawful purposes, free from significant interference*

(Emphasis added)

Residential Tenancy Branch (RTB) policy suggests that if a tenant reports issues to landlord and those reports are followed by inaction of the landlord, a loss of quiet enjoyment can be established. A landlord had an obligation to put a stop to any outside or external force which is within the landlords' power to control. For example; a landlord should investigate reports of disturbances and issue appropriate written warnings to anyone causing the disturbance. These warning can form the basis of eviction, should the disturbances not cease. The landlord cannot sit idly by and allow another occupant to cause repeated disturbances.

If the landlord fails to seriously investigate the reported disturbances and take appropriate action, and the tenant can show the disturbances have continued, the tenant may take further steps to enforce his rights under the Act.

Therefore, pursuant to section 62(3) of the Act, I Order the landlord to take steps to fully investigate the disturbances that have been reported by the tenant and to take steps ensuring protection of the tenant's right to the quiet enjoyment of his rental unit.

The tenant has the right to make further applications for dispute resolution.

### Conclusion

The landlord is Ordered to comply with the Act by taking steps to protect the tenant's right to quiet enjoyment.

This decision is final and binding and 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: October 08, 2014

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Residential Tenancy Branch

