



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

DRI, OLC

### Introduction

The tenant notified me at the beginning of the hearing that after conversations with the individual landlord he wished to amend his application by withdrawing his application to dispute a rent increase. I allowed this amendment as there is no prejudice to the landlords.

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62.

The landlords did not attend this hearing, although I waited until 1353 in order to enable the landlords to connect with this teleconference hearing scheduled for 1330. The tenant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The tenant testified that he served the landlords with the dispute resolution package on 25 November 2014 by registered mail. The tenant was unable to provide me with a Canada Post tracking number. The tenant testified that he also left a copy in the landlord's mailbox. Pursuant to subsection 89(1), registered mail is an acceptable method of service; however, leaving documents in a mailbox is not. Where a party serves documents by registered mail, proof of service generally requires providing the Residential Tenancy Branch with a tracking number. In this case, I will accept the tenant's sworn testimony that he served the landlord by registered mail. On the basis of this evidence, I find that the landlords were deemed served with the dispute resolution package pursuant to sections 89 and 90 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlords to comply with the Act, regulation or tenancy agreement?

### Relevant Background and Evidence

The parties entered into this tenancy in April 2011. The tenant pays monthly rent of \$725.00. The tenant occupies a rental unit on the second floor of an apartment building.

The tenant testified that the downstairs neighbour would bang on the walls and yell if the tenant flushed his toilet or turned on his taps.

The tenant testified that on 15 August 2014 the downstairs neighbour was playing his stereo loudly. The tenant testified that he stomped on the floor. Approximately, one half hour later, the tenant went to get his mail. The tenant testified that he saw the downstairs neighbour and that the downstairs neighbour said that he would kill the tenant and that they would find his body on the roof. The tenant testified that this threat was witnessed by his next door neighbour. The tenant testified that he filed a report with the police regarding the downstairs neighbour's threat. The tenant provided me with a police file number.

The tenant testified that he approached the downstairs neighbour once to ask him to turn down the music. The tenant testified that he spoke to the landlord three or four times. The tenant testified that the landlord said that he would speak with the downstairs neighbour.

The tenant testified that on 25 and 31 October 2014, the downstairs neighbour created excessive noise by playing loud music and banging. The tenant provided written submissions that the landlord told the tenant that the downstairs neighbour was installing laminate flooring and liked to work in time to the music.

The tenant alleges that the couple that lives in the unit next to him is "stomping".

The tenant testified that as recently as 15 December 2014, the downstairs neighbour has been playing music at levels loud enough so that the tenant can hear the music in his bedroom and requires earplugs to sleep.

The tenant asks that I order the landlord to inform the tenant's neighbours to give respect to the tenant, which includes not stomping and keeping the stereo volume down.

### Analysis

A tenant is entitled to quiet enjoyment of the rental unit. Quiet enjoyment includes:

- freedom from unreasonable disturbance; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant's right to quiet enjoyment may be breached by "unreasonable and ongoing noise". A tenant does not have to end a tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behavior. A tenant may file a claim for damages if a landlord either engages in such conduct or fails to take reasonable steps to

prevent such conduct by employees or other tenants. A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

In this case, the tenant has not provided me with copies of any written correspondence to his landlord that sets out the tenant's complaint and asks the landlord to remedy the problem. Without this evidence, I find that the tenant has failed to meet his burden to show that the landlord was notified that a problem exists.

I dismiss the tenant's application without leave to reapply; however, the tenant has the option of filing a new application in the event the neighbours' behaviour continues and the tenant first takes proper steps to address his complaints with the landlords.

### Conclusion

The tenant's application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: December 22, 2014

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Residential Tenancy Branch

