



# 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: OLC FF

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) An Order that the landlord ensure his privacy and peaceful enjoyment pursuant to section 28;
- b) To recover the filing fee for this Application

### **SERVICE**

I find that the landlord was served personally with the Application for Dispute Resolution hearing package; they stated they received it.

**Preliminary Issue:** It was agreed to amend the landlord's name to the owner of the building and the non profit agency who operates it..

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

Has the tenant proved on the balance of probabilities that the landlord has failed to protect his right to peaceful enjoyment contrary to section 28 and that he is entitled to an Order that the landlord ensure this and also to recover his filing fee?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions.

It is undisputed that the tenancy commenced in November 2009 and rent is \$375 a month. It is undisputed that there have been noise and other complaints about a neighbour tenant and the police have been called. The landlord said they are a non profit society housing clients with significant challenges and they deal with complaints promptly. They have talked to the problem tenant about the complaints and he even attended detox for a time but the complaints continued. They said even if they evicted the disturbing tenant, there is no guarantee the next one would be any better as their mandate is to house those difficult to house. However, they said they have recently

done some shift changes and now have a night time manager since January 4, 2015 who will be handling these situations Monday to Friday; they hope to have a weekend person also soon but they have funding constraints.

The tenant described the situation. He said this neighbour whose unit is a few doors from his has a constant, disruptive, barrage of loud talking, arguing, drinking and partying in his room and he leaves his door open so he disrupts many other tenants. He said this is the third time he has made Application and things get a little quieter for a short time and then it commences again. He said he often has a job and it is almost impossible to get any sleep plus he can't have any peaceful enjoyment during the day to enjoy his normal daily activities. The disruptive tenant also has smoke emanating from his unit.

The community service manager said she is new but she plans to meet with this applicant tenant and try to follow up on his complaints. She said they do evict if necessary but it is a problem as other tenants are afraid to give evidence because they get threats from persons outside the building. The applicant tenant said the disruptive tenant's behaviour is escalating with threats and he feels intimidated to even walk down the hall. He has been a long term tenant who is grandfathered and does not want to move as he said there are no other suitable units with the same conveniences.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

**Analysis:**

Section 28 of the Act sets out the tenant's right to quiet enjoyment.

*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.*

Page 6 of the Residential Tenancy Guideline explains further that "inaction by the landlord which permits or allows ...interference by an outside or external force which is within the landlord's power to control" may be a basis for finding of a breach of quiet enjoyment. Examples of such interference include "unreasonable and ongoing noise".

I find in this case the weight of the evidence is that there has been a serious breach of the tenant's quiet enjoyment by the failure of the landlord to control or evict the neighbour tenant. The weight of the evidence is that the neighbour tenant engages in yelling, arguing, drinking and other activities at all hours of the day and night causing the Police to intervene several times. I find the undisputed evidence is that the tenant has made several formal complaints to the landlord. However, I find the landlord has taken numerous steps to try to control the problem, although without continued success. I find the landlord has recently engaged a night manager for weeknights and the tenant agreed that the situation had improved since then. The landlord is also in the process of finding funding for a weekend night manager.

I find that the landlord, although they house challenged clients, has a responsibility as a landlord to know the provisions of the Act and apply them to protect tenants. I find however, they are taking action to protect the applicant's right to peaceful enjoyment and the tenant agreed the situation had improved in the past few weeks. I dismiss this application of the tenant and give him leave to reapply if the disruption to his peaceful enjoyment continues after the landlord has applied these measures of having night staff. The applicant tenant did not apply for a rent rebate for the continuing disruption so none is awarded

**Conclusion:**

I dismiss the application of the tenant with leave to reapply. I find the tenant entitled to recover his filing fee for this application as the weight of the evidence is that the application had merit. I find he may recover his filing fee by deducting \$50 from his rent payment for February 2015.

**I HEREBY ORDER that the tenant's rent for February 2015 is reduced to \$325 in order to recover the filing fee for this application.**

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: January 20, 2015

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Residential Tenancy Branch

