



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      O, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants concerning loss of quiet enjoyment of the rental unit, and to recover the filing fee for the cost of the application.

Both tenants attended the hearing and one gave affirmed testimony. However, despite being served with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on December 16, 2014, no one for the landlord attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the tenants. The tenants provided a copy of the Domestic Customer receipts showing a Canada Post stamp bearing that date as well as a tracking number provided by Canada Post and I am satisfied that the landlord has been served in accordance with the *Residential Tenancy Act*. All testimony and evidence provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established that the landlord has failed to provide the tenants with their right to quiet enjoyment of the rental unit?
- Have the tenants established a monetary claim as against the landlord for loss of quiet enjoyment of the rental unit?

### Background and Evidence

The tenant testified that this month-to-month tenancy began in July, 2013 and the tenants still reside in the rental unit. Rent in the amount of \$680.00 per month is payable in advance on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord did not collect a security deposit or a pet damage deposit from the tenants.

The rental unit is a suite in the lower level of a home and the landlord occupies the upper unit.

The tenant further testified that the landlord has continuously interrupted the tenants' right to quiet enjoyment by causing disturbances, being drunk, uttering profanities to the tenants, making unnecessary noise at all hours of the night, and disrupting the tenants' home and guests. The tenants' evidentiary material contains a description of disturbances throughout the tenancy. The tenants would have moved out before now but the community has a very low vacancy rate.

The tenant also testified that the tenants seek a monetary order equivalent to 3 month's rent for loss of quiet enjoyment. The tenants completed the Tenant's Application for Dispute Resolution following instructions from the Service BC Office. The application filed does not indicate a monetary claim or an amount.

### Analysis

For the benefit of the parties, I have included Sections 6, 7, 28, 59, 62 and 67 of the *Residential Tenancy Act*, which are relevant Sections to this tenancy.

Where a party makes an application for a monetary order, the application must be given to the other party which sets out exactly what the parties are claiming and what justifies the claim. The Application for Dispute Resolution form sets out boxes to tick respecting the nature of the dispute as well as a space for details and a place to provide the amount claimed. I have read the evidentiary material provided in addition to the application, and I find no indication at all that the tenants have applied for monetary compensation and therefore I find that the landlord has not been put on notice that a monetary claim is made.

I accept the undisputed testimony of the tenant that the landlord has caused significant interference and disturbances during the tenancy, and pursuant to Section 62 of the *Act*, I order the landlord to comply with the *Act* by ensuring that the tenants' right to quiet enjoyment is protected, pursuant to Section 28 (below). This in no way serves as a bar to any monetary claim the tenants may have, and I make no orders or findings in that regard.

Since the tenants have been partially successful with the application, the tenants are also entitled to recovery of the \$50.00 filing fee. I order the tenants to reduce rent for the month of February, 2015 by that amount as recovery.

### Conclusion

For the reasons set out above, I hereby order the landlord to comply with Section 28 of the *Residential Tenancy Act* as set out below.

I further order the tenants to reduce rent payable for the month of February, 2015 by \$50.00 as recovery of the filing fee.

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 16, 2015

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Residential Tenancy Branch

### *RESIDENTIAL TENANCY ACT*

- 6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.
- (2) A landlord or tenant may make an application for dispute resolution if the landlord and tenant cannot resolve a dispute referred to in section 58 (1) [*determining disputes*].
- (3) A term of a tenancy agreement is not enforceable if
- (a) the term is inconsistent with this Act or the regulations,
  - (b) the term is unconscionable, or
  - (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

### **Liability for not complying with this Act or a tenancy agreement**

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the

regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

### **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.

### **Starting proceedings**

**59** (1) [Repealed 2006-35-83.]

(2) An application for dispute resolution must

- (a) be in the applicable approved form,
- (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and
- (c) be accompanied by the fee prescribed in the regulations.

(3) Except for an application referred to in subsection (6), a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director.

### **Director's authority respecting dispute resolution proceedings**

**62** (1) The director has authority to determine

- (a) disputes in relation to which the director has accepted an application for dispute resolution, and
- (b) any matters related to that dispute that arise under this Act or a tenancy agreement.

(2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.

(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

(4) The director may dismiss all or part of an application for dispute resolution if

(a) there are no reasonable grounds for the application or part,

(b) the application or part does not disclose a dispute that may be determined under this Part, or

(c) the application or part is frivolous or an abuse of the dispute resolution process.

**67** Without limiting the general authority in section 62 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

