



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING SOCIETIES DOGWOOD  
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*, for an order seeking landlord's action to comply with the *Act*. The tenant also applied for the recovery of her filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### **Issues to be decided**

Is the tenant suffering a loss of quiet enjoyment? If so, is the landlord taking reasonable steps to ensure that the tenant is afforded quiet enjoyment of the rental unit? Is the landlord acting in a manner that is non-compliant with the *Act*?

### **Background and Evidence**

The tenancy started on February 01, 2011. The accommodation is subsidised housing and is allotted and rented based on a tenant's income and family size. The tenant's portion of the rent is \$583.00. The rental unit is an apartment located on the first floor of an apartment building.

The tenant testified that at the time she moved into the unit, she experienced noise disturbances from the unit directly above her, on the second floor. She stated that she tolerated the noise until October 13, 2014 when the noise disturbances stopped and "silent wave" disturbances started occurring.

The tenant stated that on that day, she entered her unit and her body was consumed with pain from the silent waves and since then, she has endured considerable pain from these silent waves that she believes are emanating from the upstairs unit.

The tenant complained about this problem to the landlord several times and after each complaint the landlord visited the upstairs unit to inspect and try to determine the cause of these silent waves. The landlord stated that he inspected the upstairs unit a total of five times looking for the cause of the silent wave disturbances, but found none. The landlord also stated that he visited the tenant three times during the times the alleged waves were causing her discomfort and he did not hear or experience anything.

The tenant stated that these waves are described as infra sound waves or ultra-sonic sound waves and cannot be heard by the human ear or measured by conventional methods. These waves can only be measured by special equipment in Hertz rather than in decibels.

The tenant stated that silent waves usually come from a faulty water pump. The tenant alleged that the occupant of the unit above her probably has a fish tank with a faulty water pump. During one of his inspections of the unit above, the landlord looked for a fish tank or a motor and he found none. The landlord stated that he heard no sound and felt no vibrations inside the unit above. He took photographs of the unit and stated that the occupants of that unit were starting to feel uncomfortable with the multiple visits by the landlord.

The tenant also stated that the occupant of the unit above probably wants to move into the tenant's unit and therefore is causing the tenant problems in the hope that she will move out.

The landlord stated that the occupants of the above suite are a couple in their fifties who both work an afternoon shift and return home around midnight. They have a granddaughter who attends university and occasionally sleeps over. They have occupied this unit for nine years and resided there at the time the tenant moved in below. They have no aspirations to occupy the unit below them as alleged by the tenant, because when it became vacant, they did not take advantage of the opportunity to do so. The landlord stated that the prior occupants of the dispute rental unit did not complain about noise or silent waves from the unit above.

The landlord canvassed other occupants of units around the dispute rental unit and they did not report any unusual activity or noise. The landlord also stated that the hot water boiler for the building is regularly inspected and no problems were detected.

The landlord offered to meet with the tenant to discuss options and the tenant declined. The landlord also offered to provide an alternative rental unit to the tenant when one became available, but the tenant declined and stated that it would be a huge financial burden for her to move to another building. However she stated that she would consider a move within the same building to a suite on an upper floor.

The tenant stated that putting a plug in her ear provides her with relief.

### **Analysis**

In order to prove an action for a breach of the covenant of quiet enjoyment, the tenant has to show that there has been a substantial interference with the ordinary and lawful enjoyment of the premises, by the landlord's actions that rendered the premises unfit for occupancy or there has been inaction on the part of the landlord which allows physical interference by an outside or external force which is within the landlord's power to control.

In this case I find that the landlord responded to the tenant's complaints of silent wave disturbances and was not able to find the cause of the problem. The landlord visited the unit above which was the alleged source of the silent waves on five different occasions and was not able to hear or experience any silent waves. The landlord looked for fish tanks or motors that may be the cause of the waves and found none. The landlord took photographs inside the rental unit above and agreed to show them to the tenant with the approval of the occupants of the above unit.

The landlord also visited the tenant's apartment on three occasions to determine the problem and was unable to detect any waves inside the unit or in the hallway outside. The landlord offered to meet with the tenant to discuss options and also offered to provide a different unit. The tenant declined both offers.

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it. Based on the testimony of both parties, I am satisfied that when the tenant advised the landlord of the problems in the rental unit, the landlord performed multiple inspections and was not able to detect the source of the alleged problem. The landlord also made offers which he believed would remedy the situation which were declined by the tenant.

Based on the above, I find that the tenant has not proven that the landlord failed to meet his obligations under the *Act*, with regard to providing quiet enjoyment which is essential to the tenant's use of the rental unit as living accommodation. Accordingly, I find that it is not necessary for me to order the landlord to comply with the *Act*.

The tenant has not proven her case and is therefore not entitled to recover the filing fee of \$50.00.

### **Conclusion**

The tenant's application is dismissed in its entirety.

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: March 04, 2015

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Residential Tenancy Branch

