



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: RR MNDC

### **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 peace and reasonable enjoyment pursuant to section 28;
- b) A Monetary Order or Rent rebate for the failure of the landlord to correct the noise from the suite above which is unreasonably interfering with his quiet enjoyment.

### **SERVICE**

I find that the landlord was served with the Application for Dispute Resolution hearing package personally. She stated they received 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 compensation or a rent rebate for this neglect?

### **Background and Evidence**

Both parties and an advocate for the tenant 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 August 2014, rent is \$750 a month and a security deposit of \$375 was paid. The tenant described noises he hears from the landlord's unit above him at 3 a.m. as a ticking type of metronome noise and a scraping which he says wakes him up and disturbs his rest. He sent in a CD recording of the disturbing noises. His advocate said that he would be prepared to make an agreement with the landlord for no monetary claim if the noise stops.

The landlord said they do not know what he is talking about so can't make an agreement to stop it. They get up at 3 a.m.; her husband has a shower and goes to work for he has an early shift. She does meditation and prayer. She said they cannot stop doing these normal activities and there is no unusual noise from them. She speculated that maybe the shower noise bothered the tenant but said this is a relatively new house (about 12 years old) and it was just a normal shower. She said the female tenant had told her privately that she is asleep and doesn't hear anything at 3 a.m. but she changes her statement when the male tenant is present. She said the male tenant has been argumentative about such things as recycling and he is free to move if this house does not suit him for some reason.

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

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**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; ...*

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 tenant has not satisfied the onus of proving there has been unreasonable disturbance from the landlord's unit. I listened to the sound CD which the tenant sent as evidence. I clearly heard a telephone conversation between the female tenant and the landlord so my sound was adequate. I heard no noises that would be described as ticking or scraping which the tenant described in the hearing; I heard one small sound that might have been a cough. Furthermore, in his application, the tenant claimed the noise sounded like jumping up and down on a rickety bed which is inconsistent with what he described in the hearing. Therefore I find the tenant has not proved on the balance of probabilities that the landlord is disturbing his peaceful enjoyment contrary to section 28 of the Act.

**Conclusion:**

I dismiss the Application of the tenant without leave to reapply. No filing fee is involved.

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 05, 2015

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Residential Tenancy Branch

