



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAI GODDARD AND SMITH  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: O RR MNDC 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 reasonable enjoyment pursuant to section 28 and compensation for the landlord's failure to do so;
- b) A Monetary Order or Rent rebate for the failure of the landlord to address the issue of bedbugs adequately contrary to section 32 and the negligence of the work persons employed which resulted in damage to his vehicle.
- c) To recover filing fees for this Application.

### **SERVICE**

I find that the landlord was served with the Application for Dispute Resolution hearing package by registered mail. They 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, plus failure to maintain the unit contrary to section 32 and neglect of proper care of the tenant's property?

### **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 February 2004 and rent is \$560 a month. It is undisputed that there have been noise and other complaints about the downstairs tenant and the police have been called a number of times. However, the named landlord said they manage only this tenant's unit in a strata corporation and they cannot control the tenants downstairs as they are tenants of another owner's unit. A lawyer wrote a letter to this tenant stating he understood that the downstairs tenant was evicted following complaints but the tenant said he still sees the troublemaker at the

building all the time. On the tenant's Application he claimed \$631.45 as compensation for bed bug treatments and the cleaning of overspray off his car. The landlord reimbursed him for these amounts on April 8, 2015 and May 12, 2015 but the tenant wanted to claim further amounts in the hearing for loss of his peaceful enjoyment.

The management company who attended for the landlord said they can only follow a process of forwarding complaints to the Strata Corporation who has to contact the offending unit's owner. They have forwarded all complaints and one tenant was evicted as a result. They said they feel powerless to do anything more for the tenant as control of the other unit's tenants is in the hands of a different owner.

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;*

*(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. However, I find it is not in this landlord's power to control the behaviour of a tenant in a unit owned by another person in a Strata Corporation. I suggested to the tenant that he might want to contact the new BC Civil Rights Tribunal which will deal with Strata matters. A Strata Corporation has the ability to deal with owners of offending units and their visitors through their Bylaws which may authorize fines or other means of compelling owners to deal with offensive behaviour of their tenants but an individual owner like this landlord does not have the ability to control

another owner's tenant. I find this landlord was not neglectful; they forwarded all complaints to the Strata Corporation and apparently one tenant was evicted. I dismiss this portion of the tenant's claim with leave to reapply.

In respect to the request for a monetary order, I find the tenant claimed only \$631.45. The landlord had notice of this amount and I find it would be unfair to amend the claim to increase it as the landlord had no notice of an increased amount to prepare to defend it. In any case, I find the landlord has no control over the property of another strata owner so the tenant would not be entitled to a rent rebate as the landlord has not through act or neglect caused the problem; the weight of the evidence is that the landlord has not neglected to forward complaints to the Strata Corporation which has the power to act.

I find the landlord has reimbursed the tenant for his expenses for bed bug treatment and the negligence of work persons who over sprayed onto his car. However these payments were not made until April and May, 2015 after the tenant filed his Application on February 19, 2015, possibly due to delay of the Strata Corporation process. Therefore I find the tenant entitled to recover his filing fee.

**Conclusion:**

I dismiss the tenant's Application for compensation for loss of peaceful enjoyment and give him leave to reapply naming the parties with power to control the situation. I find the tenant entitled to recover the filing fee for this application.

**I HEREBY ORDER THAT the tenant may recover his filing fee of \$50 by deducting it from his next month's rent.**

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: May 21, 2015

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Residential Tenancy Branch

