



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, OLC, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to cancel a Notice to End Tenancy; however, this was withdrawn at the hearing as the tenant has not been served with a Notice to End Tenancy by the landlord. The tenant has also applied for an Order for the landlord to comply with the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement and other issues.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

Is the tenant entitled to an Order for the landlord to comply with the *Act*?

### Background and Evidence

The parties agreed that this tenancy started on February 01, 2015 for a fixed term of six months ending on July 31, 2015. At the end of the term the tenancy agreement stipulates that the tenancy must end. Rent for this unit is \$800.00 per month due on the 1<sup>st</sup> of each month.

The tenant testified that the landlord has not complied with the *Act* by protecting the tenant's right to quiet enjoyment of her rental unit. The tenant testified that the tenants in the unit above

have two children and the noise of them running and banging on the floor is extreme and goes on often until late at night. The tenant is also disturbed by the tenants above playing loud music and the noise from their television set until 1.00 a.m. or 2.00 a.m. This noise has continued from the day the tenant moved into the unit.

The tenant testified that she tried to speak to the landlord about these issues but the landlord told her to document it and then put the phone down on her and told her not to speak to the building manager. The tenant started to document the noise and the times it continued for. The tenant referred to her documentary evidence concerning these time lines and noise and the written information also provided by two witnesses concerning the noise. The tenant agreed that she has not put it in writing to the landlord.

The tenant testified that the landlord has not made repairs to the unit and does not take the tenant's complaints seriously.

- 1) The shower head was not working properly. The tenant did speak to the building manager about this issue and he came and looked at but said it was fine. The tenant eventually repaired this herself.
- 2) The sliding patio door lock does not work and a broom handle is in place to prevent someone opening the door.
- 3) The garbage cans are overflowing outside and this attracts flies and the smell is overwhelming.

The tenant agreed that she has not put her complaints about the repairs in writing to the landlord as the tenant finds the landlord is not approachable and the tenant has been told not to talk to the property manager.

The tenant testified that she feels the landlord is harassing the tenant. The landlord posted a Notice of Entry to do an inspection and although the tenant was not comfortable with people being in her unit the landlord still came and did the inspection when the tenant was not at home. From this inspection the landlord has written and informed the tenant she must not smoke in her unit. The landlord has complained about an unpaid Fortis bill and complained that the tenant did not vacuum her carpets.

The tenant testified that she does not smoke in her unit, the Fortis bill was paid and when the inspection was done the tenant had only been in the unit for a month and the carpets did not need vacuuming. The tenant also feels the landlord is being unfair by not extending her tenancy past the six month term.

The landlord disputed the tenant's claims. The landlord testified that she has never been informed by the tenant about her complaints concerning noise from the unit upstairs. The person the tenant referred to as the property manager is actually the resident caretaker of the building and all tenants are informed to notify the landlord in writing of any concerns about noise or repairs. If the tenant does not do so then the landlord is unaware of the tenant's concerns and cannot act upon them.

The landlord testified that the building is controlled by Strata and has a strata manager who ensures the garbage bins are changed each week. If people from the outside use the bins to dump garbage this is beyond the control of the landlord. The landlord recalls having a phone conversation with the tenant. The tenant became rude so the landlord did inform the tenant to put concerns in writing and hung up the phone. The tenant has case workers who the landlord has previously dealt with and they are also able to email the landlord if the tenant has any concerns or problems.

The landlord testified that she has not harassed the tenant. The letter was sent to the tenant about smoking in the unit, water on the worktop and the carpets after the inspection took place. The tenant was unhappy about receiving this letter. It was a standard follow up letter sent after an inspection. The landlord testified that the tenancy was only for six months and the tenant's unit is planned for renovation. The landlord made an exception to house the tenant short term, as she was in need of housing but did not have the correct documentation.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; when a tenant has any complaints or concerns regarding noise from other occupants of the building that affect the tenant's right to quiet enjoyment of her rental unit the tenant must inform the landlord in writing. The tenant should

request that the landlord deals with the tenant's concerns in order to protect the tenant's rights under s. 28 of the *Act*. If the tenant has not informed the landlord that she is being disturbed by other occupants then the landlord cannot know there are concerns which need to be addressed.

The same applies to the tenant's issues with repairs required in the rental unit. I find the landlord's testimony credible that the tenant was notified that they must inform the landlord in writing of any required repairs in their rental unit so the landlord may then inform her resident caretaker to look at and perform any necessary repairs. The tenant should not ask the caretaker herself to do repairs as he is engaged by the landlord to carry out repair work. If the tenant has not informed the landlord about the lock on her sliding door, the shower or the overflowing garbage bins then the landlord cannot take the necessary steps to remedy these issues.

Consequently, the tenant's application for an Order for the landlord to comply with the *Act* is premature and has no merit at this time. The tenant is at liberty to inform the landlord in writing but as this tenancy will end at the end of July, 2015 the landlord may or may not have sufficient time to organize and make the required repairs to the tenant's unit or to investigate and deal with the tenant's concerns about noise from the unit above. I advised the landlord at the hearing to take steps to address the tenant's concerns about noise and speak to the tenants in the unit above to ensure the tenant's right to quiet enjoyment of her rental unit is respected for the duration of the tenancy.

The landlord should also speak to the strata manager about overflowing bins as this is a potential health risk to all tenants.

With regard to the tenants other concerns about harassment by the landlord; the landlord has a legal right to enter a tenant's unit once proper notice of entry has been served upon the tenant. The tenant has a right to be at the inspection; however, the landlord may enter the tenant's unit whether or not the tenant is present once a notice of entry has been served. With regard to the tenants other concerns about the tenancy, a landlord does not have to extend a tenancy agreement if the agreement stipulates that the tenancy will end on a certain date. In this case the parties agreed, when the tenancy agreement was signed, that the tenancy will end on July 31, 2015. The tenant must therefore move out on that date.

With regard to letter sent to the tenant. A landlord is entitled to send a tenant a letter noting any concerns in the rental unit following an inspection of that unit. The tenant may feel the issues outlined in the letter are unfair and should take that up with the landlord. I am not prepared to make any orders in this matter as I do not find the tone or the content of the letter to be unreasonable and certainly find there is insufficient evidence to show that the landlord has harassed the tenant in any way.

### Conclusion

Due to the above I find the tenant's application has little merit and is therefore dismissed.

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: July 06, 2015

---

Residential Tenancy Branch

