



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LANGLEY LIONS SENIOR CITIZEN HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: O RR FF

### **Introduction**

Both parties attended the hearing and the landlord confirmed receipt of the tenant's Application by registered mail. The tenant requests pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) An Order that the landlord ensure her privacy and reasonable enjoyment pursuant to section 28;
- b) A Monetary Order or Rent rebate for the failure of the landlord to address the noise from the suite above which is unreasonably interfering with her quiet enjoyment.

### **Issue(s) to be Decided:**

Has the tenant proved on the balance of probabilities that the landlord has failed to protect her right to peaceful enjoyment contrary to section 28 and that she is entitled to compensation or a rent rebate for this neglect?

### **Background and Evidence**

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. The tenant said at the outset of the hearing that she wished to withdraw her Application for compensation and wanted only to proceed on her Application for the landlord to obey section 28 of the Act.

It is undisputed that the tenancy commenced in 2007, rent is subsidized to \$320 which is paid from the Ministry and a security deposit of \$256 was paid. The tenant said she has ongoing problems with noise from the suite above. The occupier of that suite had a guitar and now has a drum set and sings, sometimes at 3:30 a.m. This triggers her mental and physical health issues as she has fibromyalgia. She said there is a nearby club where this man could have his band practice. She has had caretakers knock on his door at least 5 times to no effect.

The landlord said they are not aware of any 3:30 a.m. band. The Support Worker's Office is beside this unit and they are there 24/7 and have not heard the noise this tenant complains about. They said he plays the guitar sometimes in the afternoon but it is not intrusive to others. They have had no other complaints about this. They note the tenant has made no written complaints but has a habit of turning up at their office in a crying, emotional state. If she complained in writing when the noise happened, they may be able to address it. She stays at another resident's unit most of the time and the emotional upsets and complaints tend to be when she has had a misunderstanding with this other resident and comes back to her unit. She has written an email to a worker and the unit above which was threatening. The tenant said that was only 'in her opinion'. The landlord said the caretakers did not find the noise intrusive when they went to the upper tenant's door at her request and the Health Support Worker said this also.

The landlord offered a transfer but the tenant did not find it acceptable as she is waiting for some BC Housing in another area. She agreed she stays at the other person's residence most of the time but if there is a problem, she goes home but because of the noise, it is not an acceptable home. She feels homeless.

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 insufficient evidence that there has been a serious breach of the tenant's quiet enjoyment. I find the weight of the evidence is that the upstairs tenant's noise is not intrusive to anyone else. The landlord offered a transfer but the tenant refused. I find insufficient evidence that the landlord has failed to protect the quiet enjoyment of the tenant.

**Conclusion:**

I dismiss the application of the tenant in its entirety without leave to reapply. Filing fees were waived.

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: April 20, 2016

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Residential Tenancy Branch