



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, LRE

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

The landlord did not participate in the conference call hearing, which lasted approximately 20 minutes. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenant testified that the landlord was personally served with the tenant's application, for dispute resolution hearing package on February 26, 2017 and the evidence package on March 8, 2017. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application on February 26, 2017, and the evidence package on March 8, 2017.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

### Background and Evidence

The tenant testified that the tenancy began in August or September of 2006 on a month-to-month basis. Rent in the amount of \$910.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$350.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant testified that since November 22, 2014, the occupant below her rental unit regularly hosts loud parties that infringe on her right to quiet enjoyment. The tenant testified that she has routinely reported these instances to the landlord and police yet the partying continues. In an effort to support her position, the tenant has provided a log of instances and copies of text messages between her and the landlord.

The tenant testified that on an undisclosed date, the landlord entered the rental unit without her permission and in her absence. The tenant was out of the country and had a friend staying in the rental unit when the landlord entered unannounced. The tenant recalled another incident that occurred sometime between 2007 and 2012, in which the landlord entered the unit, opened the closet, took out her brother's jacket and threw it to the ground. Based on these two events, the tenant seeks to suspend or restrict the landlord's right to enter the rental unit.

### Analysis

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference and situations in which the landlord was aware of interference and failed to take reasonable steps to rectify it would constitute a breach.

Based on the undisputed evidence before me, I find the tenant has established that her right to quiet enjoyment has been breached by unreasonable disturbances by the occupant below her; the landlord was made aware of such disturbances and the landlord has failed to take reasonable steps to rectify it. Pursuant to section 62 of the *Act*, I order the landlord to provide quiet enjoyment to the tenant, specifically to ensure the tenant is free from unreasonable disturbances from the occupant below. The tenant is at liberty to apply for a monetary award in the future if the landlord does not abide by the provisions of Section 28 of the *Act*.

Section 29 of the *Act* sets out the provisions that establish when a landlord can enter a tenanted rental unit. Based on the tenant's undisputed testimony, the landlord did not

abide by these provisions. Specifically, the landlord entered the rental unit without permission from the tenant and without written notice. Despite this finding, I find the instances as described by the tenant do not warrant suspension or conditions on the landlord's right to enter. Instead, I caution the landlord to cease and desist from unauthorized entry and to abide by section 29 of the *Act*. The tenant is at liberty to apply for a monetary award in the future if the landlord does not abide by the provisions of Section 29 of the *Act*.

### Conclusion

I order the landlord to provide quiet enjoyment to the tenant, pursuant to section 28 of the *Act*.

I dismiss the tenant's application for an order to suspend or set conditions on the landlord's right to enter the rental unit.

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 28, 2017

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Residential Tenancy Branch

