



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: O RR

### **Introduction**

Both parties and a witness attended the hearing and gave sworn testimony. The landlord confirmed that the tenant served her personally with his Application. The tenant said he did not receive the landlord's evidence and she said she was unaware that she had to serve him with it. As the written evidence of the landlord was not served on the tenant, I will not consider it for this Decision. The tenant applies 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 a monetary order or rent rebate for her failure to do so since November 2016.

### **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 a witness attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy commenced November 15, 2016, rent is \$500 a month and a security deposit of \$250 was paid. There are 3 floors in the home and several occupants per floor with a shared bathroom and laundry facilities.

The tenant states another male tenant, S., assaulted him by drugging him at a gathering at another tenant's, a female D.'s room. He called the Police but no charges were laid. He said the landlord did nothing about it. He spoke to her and texted but she just said there was alcohol and he was drinking. He said he only had 3 beers before S. forced him to drink something that had a drug in it. A female M.J. who is a tenant in a lower floor said she saw the Police escort this tenant outside and tell him to stay away. He said he roamed the streets at Christmas time very disoriented due to the drug. M.J. said that this tenant also uses marijuana. The tenant said he has a medical prescription

for it and M.J. sometimes has it too. The tenant said the Police did nothing about the assault and said it was just his story.

The tenant also details the circumstances of significant disruption of his peaceful enjoyment and the landlord's failure to protect it. He claims a rebate of \$250 a month for 6 months due to this failure to protect it. He said a female tenant, D., had a boyfriend to stay for a long time. He confronted the boyfriend and told him that he had to leave and he then left. She then got another one and this time the landlord told him that he had to leave. M.J. who is a witness said she tried to mediate between this tenant and D. unsuccessfully because this tenant has such a bad attitude and manner. She said he drinks and does drugs sometimes. The female D. finally left.

The tenant also notes a male tenant, C., is very loud. The landlord got involved and he was quieter for a time but he drinks a lot. The tenant notes a male tenant, S. is the worst. S. works in a hotel where there are drug addicts and he brings girls home all the time. One of them, Sh., moved in for 2 months. She is loud and always waking him up. He called the Police a few times about this. He also notes that S. harasses and threatens him constantly. He put a notice on this tenant's door that was an extreme insult and jailhouse talk. When he knocks on his door, the tenant S. threatens him. He says the landlord will not call Police about S. He said he gave S.s girlfriend a small token of friendship, a pencil holder, and he found it in the bathroom with a noose around its neck which is another threat to him. He says his monetary claim is secondary. He just wants the landlord to pay attention to protecting his peaceful enjoyment. He wants to stay and appreciates the low rent in a convenient area. He said the landlord puts the onus on him, says there are no witnesses to his allegations and gives him no feedback.

The landlord described the unit as being in a rental house with 3 persons on each of the top two floors and one in the basement. She said she has called the Police concerning the tenant's complaints but they refuse every time to give her any information as it is confidential. She said she has spoken to the tenants S. and C. and they deny the tenant's allegations. They say this tenant is the one causing the problems and point to the fact that the Police escorted this tenant outside from the gathering where he said he was drugged by S.

She said the tenant C. is a longer term tenant who was there before she took over. She said no one else complains that he is noisy and she never heard of a drinking problem. She said that the female tenant D. moved out because this tenant was harassing her. She never heard that D. had one night stands from anyone except this tenant. She said the basement tenant, M.J. who is a witness today tried to help with the situation.

Furthermore, she said she talked to all the tenants prior to this hearing and none of them said they had any complaints about the tenants S., C. or the female D. who left. However, she said they had lots of complaints about this tenant. They say he disturbs them by knocking on their door asking for change, by being very loud, by taking laundry soap and by leaving the bathroom door open. She noted the others have jobs, they are at work but this tenant is around the house bothering the others. She said the other tenants did not complain about him but she asked because of this arbitration. She submitted some letters from other tenants. However, she did not serve the tenant with this evidence so I have not read or considered the letters as the tenant did not have an opportunity to read and respond to this evidence. The tenant noted the landlord had no evidence and is lying.

The basement tenant was a witness and gave evidence. She said this tenant seriously disturbs her peaceful enjoyment by knocking on her door late at night asking for cigarettes (sometimes marijuana). This wakes her up and she has to work next day. He has called the Police a few times which resulted in them banging on her door in the early hours of the morning. She knows nothing about insults being pinned to this tenant's door. The tenant said the witness M.J. drinks a lot and she was trying to get him to allow D.'s boyfriend to stay. As for the cigarettes, he said he thought they were friends. He also has a medical prescription for marijuana for his stress disability. He said no one says anything because they do not stick up for their rights but he does. He said he won a case against his previous landlord that involved cockroaches.

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.

*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".

However, I find insufficient evidence that this landlord has failed to protect this tenant's right to privacy and freedom from unreasonable disturbance. I find the landlord's evidence credible and prefer it to the tenant's evidence as I find she has spoken to the accused persons and all the tenants in the home to try to ascertain the truth of the complaints. Her evidence is well supported by the witness today who was an eye witness to the alleged assault and noted the Police had to remove this tenant (not S. whom he accuses). I find the tenant was attending a gathering where they were drinking at the time of the alleged assault and he agrees he had 3 beers. I find it improbable that S. forced this tenant to drink something with a drug in it.

I find insufficient evidence to support his allegations that the tenants D., C. and S. with his girlfriend Sh. have seriously disturbed this tenant's peaceful enjoyment. The landlord states she has had no other complaints about these tenants and the witness today supports this and says the only problem she notes in the house is this tenant's behaviour. There is insufficient evidence that another tenant put insults on his door or a threat in the bathroom or if so, that the landlord failed to try to address it. Although this tenant may have had some success against another landlord in the past, I find insufficient evidence to support his complaints about this landlord. I find insufficient evidence that other tenants are disturbing his peaceful enjoyment and insufficient evidence that the landlord is failing to protect it.

**Conclusion:**

I dismiss the Application of the tenant in its entirety without leave to reapply.

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 10, 2017

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Residential Tenancy Branch