



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein

The hearing was conducted by teleconference at 9:00 a.m. on February 21, 2018. Only the Tenant called into the hearing. She gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Tenant testified that she served the Landlord with the Notice of Hearing and the Application on December 7, 2017 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

*Residential Tenancy Policy Guideline 12—Service Provisions* provides that service cannot be avoided by refusing or failing to retrieve registered mail:

Where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing.

Pursuant to section 90 of the *Residential Tenancy Act* documents served this way are deemed served five days later; accordingly, I find the Landlord was duly served as of December 12, 2017 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Tenant's

submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Should the Landlord be ordered to comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, or the tenancy agreement?

### Background and Evidence

The Tenant testified that the tenancy began September 5, 2016. She pays \$700.00 per month which includes heat and electricity. The rental unit is a one bedroom basement suite in a home which includes an upper suite and another basement suite.

The circumstances giving rise to the application relate to the Tenant's view that the Landlord has inadequately responded to her concerns about the noise created by the upstairs tenants. The Tenant stated that the tenants in the upper unit moved in July 1, 2017. She stated that prior to that the previous tenants were quiet and easy to communicate with.

The Tenant stated that the Landlord lives in a different community and as such asked the Tenant to find renters for the upper unit. She stated that she advertised the unit and secured the upstairs renters as tenants on behalf of the Landlord. She further stated that during the initial discussions she informed that upstairs renters that she and the other downstairs renter were seniors, were very quiet, and that they all had to make their best efforts to minimize sound as the house had soundproofing issues.

The Tenant stated that despite these conversations the upstairs renters just "crash through here and do whatever they want during the day" making excessive noise.

The Tenant stated that she doesn't work until 1:00 p.m. such that she doesn't have to be up at 7:00 a.m. or 8:00 a.m. She said she doesn't set an alarm, but is now woken up 7 days a week early in the morning due to the noise from upstairs.

The Tenant stated that she believes there is no sound proofing between the floors. She stated that she believes the upper floor renters are deliberately dropping large items on the floor of their dining room to create noise. She also stated that the upper floor renters have one cat which she estimates weighs 50 pounds.

The Tenant stated that she can hear the upper floor renters at all times, unless they are in their bedroom which has carpeting. The Tenant stated that she believes the home was built in the 1970's and has laminate flooring in most of the rooms. She stated that the bedrooms are carpeted and they are "fine".

The Tenant stated that the other downstairs renter is also a senior and is very quiet. She stated that this renter's suite is under the upper floor's laundry room and kitchen.

The Tenant stated that she has purchased custom made sleeper earplugs on January 2, 2018 in order to address the noise but this has provided only minimal relief.

In the application before me the Tenant requested an Order that the Landlord install good carpeting and underlay to abate the noise from the dining room. The Tenant noted that the dining room is directly over her bedroom. The Tenant stated that there is an area rug in that room already but it doesn't go to the walls and the cat "lands on the laminate". The Tenant stated that she asked the Landlord to install carpeting in the dining area as she is certain this will alleviate some of the sound issues.

The Tenant further stated that she wants the Landlord to step up to the plate and tell the upper renters to stop acting like they are the only people in the house.

The Tenant provided a video showing the noise between January 7 to February 2, 2018 which is condensed down to a five minute video to show the noise.

The Tenant also provided a video of an altercation with the upper renter. The Tenant stated that she heard the upper tenant say "is that crazy lady yelling at you again" and the Tenant went upstairs and recorded the altercation.

The Tenant stated that she created an online group to help seniors find affordable housing. She stated that as a result she is looking for accommodation regularly and unfortunately there is no affordable housing for a 64 year old woman with a small dog. She confirmed that it is her desire to move but she has not been able to find another rental and as such asks that the Landlord take steps to ensure her right to quiet enjoyment.

### Analysis

After consideration of the undisputed testimony and submissions before me, and on a balance of probabilities, I find as follows.

I accept the Tenant's evidence that she is disturbed by the noises created by the upstairs renters. It is unfortunate that the situation has progressed to the extent that the two appear to be in regular conflict. While it is not possible to turn back time and correct the situation when it first started to deteriorate, I am hopeful that the relationship can improve.

A tenant's right to quiet enjoyment is protected under section 28 of the *Residential Tenancy Act*, which reads as follows:

**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.

*Residential Tenancy Policy Guideline 6—Right to Quiet Enjoyment* provides in part as follows:

“ ...

Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment.

...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

A landlord would not normally be held responsible for the actions of other tenants unless notified that a problem exists, although it may be sufficient to show proof that the landlord was aware of a problem and failed to take reasonable steps to correct it.

...

I accept the Tenant's evidence that she has made the Landlord aware of the noise issues, the conflict which has resulted, as well as her suggestion that the dining room floor be carpeted to alleviate the sound issues. The Tenant is entitled to quiet enjoyment of the rental unit and the Landlord cannot sit idly by while that right is infringed.

The Tenant's request that the Landlord carpet the dining room area upstairs seems reasonable based on the evidence provided.

I therefore Order, pursuant to section 62(3) of the *Residential Tenancy Act*, as follows:

- 1. Within 14 days of receipt of this Decision, the Landlord shall install carpeting and underlay in the upstairs dining room as a means to address the noise transference issues between the two rental units.**

The Tenant was encouraged during the hearing to bring her concerns to the Landlord's attention rather than communicating directly with the upstairs renters. Again, it is hopeful that this will also reduce conflict between the parties.

### Conclusion

The Tenant's request for an Order pursuant to section 62(3) of the *Act* is granted. The Landlord shall, within 14 days of receipt of this Decision, install carpeting and underlay in the upstairs dining room as a means to address the noise transference issues between the rental units.

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 2, 2018.

---

Residential Tenancy Branch