



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") section 62 for an order that the landlord comply with the *Act*, regulations or tenancy agreement.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The named landlord was assisted by his agent JY (the "landlord") who primarily spoke on behalf of the landlord.

As both parties were present service was confirmed. The landlord testified that they had been served with the tenant's application and evidence and had not served any evidence of their own. Based on the undisputed testimony I find that the landlord was served with the tenant's hearing package in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in May, 2012. The rental unit is one of five units in the building. The current monthly rent is \$469.00 payable on the first of each month. A security deposit of \$212.00 was paid at the start of the tenancy and is still held by the landlord.

A new occupant moved into the suite above the rental unit in January, 2018. Since that time the tenant testified that there has been excessive noise originating from the

neighbor's suite. The tenant made several complaints to the neighbor directly as well as to the landlord.

The landlord testified that based on the complaints they issued the neighbor warnings and ultimately a Notice to End Tenancy for Cause in January, 2018. The landlord said that the tenant disputed the Notice and applied for a hearing under the file number on the first page of the decision. The landlord said that while the tenant's application was dismissed at that hearing the Arbitrator declined to issue an Order of Possession as it did not meet the form and content requirements of Section 52 of the *Act*. The landlord testified that they believed that they were prohibited from issuing any further Notices to End or seeking an Order of Possession after the decision was issued.

The landlord testified that they sought to resolve the noise complaints in other ways including issuing warnings to the parties and attempting to facilitate a discussion to explore mediated settlements. The landlord said that they were unsuccessful with the attempts and the noise complaints have continued naming both the neighbor and the tenant as the source of the disruptions.

The tenant seeks the landlord be ordered to take action against the neighbor and ensure their quiet enjoyment.

### Analysis

The Act sets out at section 28 that a tenant has the right to quiet enjoyment of their rental unit as follows:

**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.*

While I accept the evidence of the tenant that the Neighbor's noise is at a level and frequency that requires intervention by the landlord I find that the landlord is taking the necessary and appropriate steps to resolve this issue. Residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to quiet enjoyment, under the *Act*. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. The landlord described an appropriate process that has been followed. The Neighbor has been issued warning letters and a Notice to End Tenancy. The landlord appeared at a dispute resolution and sought an Order of Possession. They testified that they have consulted the Branch seeking advice and have acted in accordance with the information provided. I accept the landlord's evidence that appropriate measures are being taken to address the tenant's concerns.

While the steps taken by the landlord may not be as dogged as it could be I find that it is still reasonable and appropriate. I see insufficient evidence to demonstrate that the actions taken by the landlord have been inappropriate or inadequate under the circumstances.

### Conclusion

I dismiss the tenant's application 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: September 21, 2018

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Residential Tenancy Branch