



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF HOUSING SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant (the “Application”). The Tenant sought an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), *Residential Tenancy Regulation* and/or the tenancy agreement.

The Tenant appeared at the hearing with the Law Students. The Agents attended the hearing for the Landlord.

The Tenant had named the Agents as landlords on the Application. The parties agreed it was appropriate to remove the Agents as landlords from the Application and I did so. This change is reflected in the style of cause.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues were raised in this regard.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issue to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), *Residential Tenancy Regulation* and/or the tenancy agreement?

### Background and Evidence

The parties agreed on the following. There is a written tenancy agreement in this matter. The agreement was originally between a different landlord and the Tenant in relation to the rental unit. However, the Landlord took over and inherited the agreement from the previous landlord. The tenancy started six years ago.

The Tenant advised that this is a month-to-month tenancy. The parties agreed rent is \$739.00 due on the first day of each month.

The Tenant sought the following based on an alleged breach of her right to quiet enjoyment:

- Eviction of the offending tenant or transfer of the Tenant to a quieter rental unit
- Compensation in the amount of \$2,600.00

The Tenant testified as follows. The tenant in the rental unit below her (the “Lower Tenant”) makes noise that is breaching her right to quiet enjoyment. She started reporting the noise issue to the Landlord a year ago. The noise issue has been ongoing for 14 months. There is noise from other rental units; however, it is not difficult to tell that the Lower Tenant makes significant noise for extended periods of time. The noise wakes her up during the night and she cannot sleep. The noise is causing her pain and suffering.

The Tenant submitted that it took the Landlord a long time to address the noise issue. She stated that the Landlord says the problem has been addressed but it has not been addressed. The Tenant referred to the fact that the Landlord has served a notice to end tenancy on a different tenant that they believe is causing the noise. The Tenant said this will not address the problem because it is the Lower Tenant making the noise, not the tenant who has been served with a notice to end tenancy.

The Law Student submitted that the Lower Tenant makes ongoing excessive noise on a regular basis between 11:00 p.m. and 7:00 a.m. The Law Student submitted that the Landlord has failed to protect the Tenant’s right to quiet enjoyment.

The Law Student submitted that the Tenant has attempted to mitigate her loss. He pointed to the ongoing reports submitted to the Landlord about the noise issue. He also said the Tenant has used earplugs and medication to attempt to deal with the noise and to sleep at night.

The Tenant pointed to the witness statement of A.M. to support her position that the Lower Tenant is the source of the noise issue. The evidence shows A.M. lives below the Lower Tenant.

The Tenant also pointed to a noise complaint co-signed by another neighbour in support of her position that it is the Lower Tenant who is the source of the noise.

In relation to the amount of compensation requested, the Law Student pointed to a case referred to in the Tenant's materials. The Law Student submitted that the case is similar to this matter and the individual in that case was awarded \$100.00 per week in compensation due to an excessive noise issue. The Law Student said the Tenant relied on that case as the basis to request \$100.00 per week for 26 weeks that her quiet enjoyment has been breached. The Law Student submitted that this matter is different in that the noise occurs at night and has gone on longer.

The Agent for the Landlord testified as follows. Noise complaints are difficult for the Landlord to deal with because it is difficult to determine the source of the noise. The Landlord did look into the noise complaints made by the Tenant. The Landlord talked to the Lower Tenant and gave him a letter. However, the Landlord felt that he was not the source of the noise. The Landlord talked to other tenants in the building who identified the tenant who is the source of the noise. The Landlord felt that the noise was more likely coming from him given his personal circumstances. The circumstances of the tenant are consistent with the type of noise and time frame for the noise as reported to the Landlord. The rental unit is in a concrete building and so it is hard to tell where noise is coming from. The Lower Tenant likely does make noise from time to time; however, he is not the source of the ongoing noise.

Agent J.C. testified that management investigated the complaints from the Tenant, A.M. and the third neighbour. He said management talked to tenants on the same floor as the Lower Tenant. Agent J.C. testified that management did not find any other tenants on that floor who agreed with the reports about noise coming from the Lower Tenant. He said all reports pointed to another tenant on the same floor, the tenant who has been issued a notice to end tenancy.

The Agent testified that the Landlord gave the tenant who is the source of the noise verbal and written warnings and time to sort the issue out. He said the tenant was then given a last warning about the noise. He testified that the tenant has not cooperated and so the Landlord has issued a notice to end tenancy.

The Agent testified that the Landlord did hear the Tenant's concerns but that it is not always possible to tell her what the Landlord is doing to address those concerns. He said the Landlord was writing letters to address the noise. The Agent said the Landlord is careful about evicting tenants given the nature of the rental unit building. The Agent denied that the Landlord has been negligent and said the Landlord did act on the complaints made.

The Agent testified that the Landlord deals with noise complaints all of the time and they have to have a fair and equitable process to deal with these. He said the Landlord receives transfer requests from a lot of tenants. He said it is difficult to manage people moving around the building. He said the Tenant is on the list for alternate housing. The Agent testified that the Landlord cannot move every tenant who wishes to be moved.

The Agent did not dispute the testimony of the Tenant in relation to when she started reporting the noise issue. Nor did the Agent dispute the testimony of the Tenant in relation to her experience regarding the noise issue.

In reply, the Tenant said the Landlord has had numerous new tenants move into the building during the relevant time and therefore there was ample opportunity to move her to a different unit.

The Tenant submitted numerous written complaints made to the Landlord about the noise starting in April of this year. In the evidence submitted, the Tenant states that she knows it is the Lower Tenant that is the source of the noise based on whose lights are on and from talking to various neighbours.

From the evidence submitted, it appears the Landlord believes the noise is coming from the immediate neighbour of the Lower Tenant. The evidence also mentions the Landlord discovering the source of the noise through fob activity and speaking to neighbours.

The Tenant submitted documentation showing she requested alternate accommodation in June and July.

The Tenant submitted a signed witness statement of A.M. This individual reports the same type of noise coming from the Lower Tenant who lives above him. A.M. reports that the noise has repeatedly woken him up.

Agent J.C. submitted a statement. It indicates that he interviewed other tenants about the noise in May, July and October. It states that Agent J.C. warned and sent letters to the tenant who is the source of the noise stating that the tenancy is in jeopardy. It states that the tenant who is the source of the noise had received a final warning as of October 25, 2018.

The Landlord submitted a signed letter from a community support coordinator who states that he has looked into the noise complaints and the Tenant has identified the wrong tenant as the source of the noise.

The Landlord submitted a letter sent to the tenant who they believe is the source of the noise on May 18, 2018 stating that he is breaching his tenancy agreement.

The Landlord submitted a letter dated June 19, 2018 that was sent to the tenant who is believed to be the source of the noise again warning the tenant that the tenancy is in jeopardy given the noise complaints and indicating that the tenant needs to address the issue.

### Analysis

Section 28 of the *Act* relates to quiet enjoyment and states:

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:

...

(b) freedom from unreasonable disturbance;

...

Policy Guideline 6 deals with the right to quiet enjoyment and states in part:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

...

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss...In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

Policy Guideline 16 deals with compensation for damage or loss and states in part the following:

...In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

I accept that the Tenant has been dealing with the noise issue described by her for 14 months. I accept that the noise is excessive and ongoing and involves moving furniture and hammering during the night as described in the evidence and submissions. I did not understand the Landlord to dispute these points. I accept that the noise is beyond the noise one would reasonably expect to hear in a rental unit building given the nature and timing of it. This is supported by the number of reports made by the Tenant, the report made by A.M. and the response of the Landlord in relation to the noise. I accept that the Tenant's right to quiet enjoyment has been breached.

I accept that the Landlord was aware of the noise issue as the Agents did not dispute that the Tenant had been reporting the noise issue to the Landlord for the past year.

I am not satisfied that the noise is coming from the Lower Tenant versus his neighbour. I find the evidence on this point from the Tenant conflicts with the evidence on this point from the Landlord. I find the evidence of each party equally compelling. I am not satisfied that the Tenant has met her onus to prove on a balance of probabilities that it is the Lower Tenant that is the source of the noise issue.

However, regardless of who is making the noise, I am satisfied based on a balance of probabilities that the Landlord did not take reasonable steps to correct the issue in a timely manner. I accept the Tenant's testimony that the noise issue has been occurring for 14 months and that she has been reporting this to the Landlord for 12 months given the Agents did not dispute this. The Tenant submitted that the Landlord took too long to address the noise issue. Based on the evidence of the Landlord, I find that the issue was not seriously addressed until May of this year. Therefore, I find the Landlord was aware of the noise issue for approximately six months before the Landlord took meaningful steps to address the issue.

I acknowledge that the Agent testified that the Landlord spoke to, and issued a letter to, the Lower Tenant in relation to the noise issue and that this may have occurred prior to May; however, the Landlord did not submit evidence in relation to this correspondence and I do not have evidence before me in relation to the timing of this correspondence.

I also note that the Landlord submitted a letter dated in January sent to the tenant who they believe is the source of the noise; however, I do not accept based on the content of the letter that it relates to the ongoing noise issue raised by the Tenant.

I accept the submission of the Tenant that the Landlord did not address the noise issue soon enough. I find six months is too long to allow a noise issue of the nature described to persist before written warnings are issued to the tenants causing the noise. I find that the delay in taking meaningful steps to address the issue resulted in the Tenant experiencing a breach of her right to quiet enjoyment for 14 months which I find to be a lengthy period of time. Further, I accept that the noise issue has been serious and has had adverse affects on the Tenant as the Agents did not dispute this aspect of the Tenant's testimony and evidence.

I accept the testimony of the Tenant that she attempted to minimize her loss by using earplugs and medications to help with the noise and to sleep as the Agents did not dispute this. I also accept that the Tenant attempted to minimize her loss by reporting the noise issue to the Landlord and by requesting alternate accommodation based on

the evidence submitted in this regard. I am satisfied the Tenant did what she could to minimize her loss in relation to the noise issue.

I am satisfied that the Tenant is entitled to compensation for the breach of her quiet enjoyment. The Tenant has requested \$100.00 per week for 26 weeks and I find this to be reasonable taking into account the rent amount, seriousness of the noise issue and length of time the noise issue has persisted. I also note that 26 weeks is less time than I have found the Tenant has endured the noise issue for. I award the Tenant the \$2,600.00 requested.

I decline to order the Landlord to evict the Lower Tenant or to move the Tenant to a quieter rental unit as requested. I am not satisfied the Lower Tenant is the source of the noise issue and therefore do not find it appropriate to order eviction of the Lower Tenant. I accept the testimony of the Agent that it is difficult to move the Tenant to a different rental unit and am not satisfied that ordering this is appropriate in the circumstances of this matter.

#### Conclusion

The Tenant is entitled to compensation in the amount of \$2,600.00 for a breach of her right to quiet enjoyment. I decline to order the Landlord to evict the Lower Tenant or move the Tenant to a different rental unit.

The Tenant is granted a Monetary Order in the amount of \$2,600.00. This Order must be served on the Landlord and, if the Landlord does not comply with the Order, it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: November 22, 2018

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Residential Tenancy Branch