



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BLOOM GROUP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing dealt with the tenant's application pursuant to section 62 of the *Residential Tenancy Act* (the *Act*) for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement. The tenant also sought compensation for two years of ill health associated with noise that the tenant maintained was originating in the rental unit above them. Although the tenant's application did not clearly identify this matter or identify an amount the tenant was seeking as compensation, the landlord's representative at this hearing (the landlord) confirmed that they realized that this was part of the tenant's application, so I have included this as part of the issues properly before me.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. At the hearing, I clarified that the landlord's corporate name as identified above is the name of the Respondent, and not the name cited on the tenant's original application. In accordance with the powers delegated to me under the *Act* and with the permission of both parties, I corrected the Respondent's name accordingly.

As the landlord confirmed that in early November 2018, the landlord's office received a copy of the tenant's dispute resolution hearing package, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

After both parties provided their sworn testimony, and after the tenant informed me that she was not intending to call any witnesses, the tenant remembered that there was someone who lived on the same floor as the upstairs tenants who might have important testimony for consideration at this hearing. Although the tenant had already had her

chance to call witnesses, had not spoken with this other tenant prior to this hearing about her availability to act as a witness, and had not provided anything in writing from this potential witness, I agreed to attempt to connect with this potential witness. After many attempts, I was unable to connect with this potential witness. In deciding to proceed without testimony from this potential witness, I note that as the tenant had not made any prior arrangements to have this potential witness testify, nor did this potential witness even know the time and date of this hearing or that she might be called as a witness by the tenant, it was unlikely that this potential witness would have been available or prepared to provide testimony that would have been of value to the matter before me.

#### Issues(s) to be Decided

Should any orders be issued against the landlord with respect to this tenancy?  
Is the tenant entitled to any form of compensation for their loss of quiet enjoyment in this tenancy?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant moved into this 21-floor 222 unit rental building in August 1995. The tenant's portion of the Rent-Geared to Income monthly rent for her bachelor unit is currently set at \$419.00, payable in advance by the first of each month. The landlord said that all units in this building are for seniors or for persons with disabilities.

The tenant maintained that since the current tenants moved into the rental unit above her, she has experienced sudden and abrupt noises, particularly during the middle of the night. The tenant said that these noises have seriously interfered with her sleep, causing her stress and anxiety, and that the landlord has done little to resolve her concerns. At first, the tenant testified that she commenced complaining to the landlord about this problem in August 2017. She subsequently corrected this testimony, claiming that she started raising this with the landlord in November 2017; later corrected again by her when she stated that she started complaining in September 2017. The tenant entered into written evidence copies of notes she had sent to the landlord's representatives as well as their written responses. The tenant also entered into written evidence an extensive and detailed list of the dates and times when she claimed to

have heard loud noises originating in the rental unit above her, as well as a brief description of the types of these noises.

In the tenant's written evidence and sworn testimony, the tenant maintained that there were loud noises caused by the tenants in the rental unit above her dropping heavy objects in the middle of the night or dragging furniture across the floor. The tenant's written evidence asserted that the upstairs tenants must be performing some type of ritual each night requiring the dropping of heavy objects on the floor above her bedroom. The tenant also claimed that the tenants above her must have a hide-a-bed which they open and bang on her ceiling many nights. The tenant claimed that another tenant, the potential witness I tried to connect with during the hearing, told her that the upstairs tenants had a sofa bed

The landlord said that the two tenants who live above the tenant moved into their two bedroom living unit in September 2016. The landlord said that this rental unit had been combined from a bachelor unit and a one bedroom unit for a former resident manager's use. The landlord gave sworn testimony that no one else in this multi-resident building has sent the landlord complaints about noise originating in the rental unit above the tenant. The landlord gave sworn testimony and written evidence that the two tenants who live above the tenant maintain that they are being harassed by the tenant on an ongoing basis and have no idea of what the tenant is referring to in her complaints about excessive noise coming from their suite. The landlord entered written evidence that both tenants are frequently out of town and not staying in the rental unit on many of the dates when the tenant claims that they are being excessively noisy in their rental unit above the tenant.

The landlord also entered into written evidence a letter from the resident in the rental unit beside the tenant, which is also directly below the upstairs tenant. The landlord said that this tenant actually lives below two-thirds of the upstairs tenants, as opposed to the tenant who is located under the remaining one-third of the two bedroom suite upstairs.

The landlord also provided written evidence and gave sworn testimony that they had instructed the landlord's night cleaners and maintenance people to report any noise that they might hear in the vicinity of the upstairs tenants or the tenant. They have reported nothing unusual. The landlord also testified that he had personally attended the area of the rental building occupied by these two sets of tenants, and he has been unable to hear any unusual noises referenced in the tenant's written evidence and sworn testimony. The landlord testified that they have taken the tenant's complaints seriously,

have spoken with the tenants who live above the tenant on a number of occasions, and have done everything that they could to look into the tenant's complaints about noise. The landlord said that it is possible that the tenant is unusually sensitive to noise or that there could be cognitive issues that have given rise to the tenant's complaints.

The landlord said that bachelor suites such as the one where the tenant has been residing become available frequently in this complex, and one was available for rent at the end of December 2018 for occupancy shortly thereafter. The landlord said that the landlord would be willing to make arrangements to allow the tenant relocate to this or any other bachelor rental unit that becomes available, and would leave the tenant on a list of those tenants interested in obtaining a one-bedroom rental unit, her preferred accommodation, in this building. The landlord also said that the landlord would be willing to make arrangements with one of their maintenance staff or other staff to assist the tenant with moving to another unit that becomes vacant in this housing complex if the tenant is interested in such a move. At the hearing, the tenant rejected this offer, stating that she would only like to move to a one-bedroom unit, and has an active request for such a rent-geared-to-income unit.

### Analysis

Section 28(b) of the *Act* reads in part 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:...*

*(b) freedom from unreasonable disturbance;*

Sections 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. Section 7(1) of the *Act* establishes that a party who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the other party for loss that results from that failure to comply. In order to claim for loss under the *Act*, the party claiming the loss bears the burden of proof. The claimant must prove the existence of the loss, and that it stemmed directly from a

violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss. In this case, the onus is on the tenant to prove on the balance of probabilities that they are entitled to a monetary award for losses arising out of this tenancy.

I first note that the tenant's claim for the loss of quiet enjoyment or the loss in the value of her tenancy for a two-year period extends well before the tenant testified that she began raising this issue with the landlord in either August, September or November 2018, according to her conflicting testimony on this point. The landlord could not be held liable for losses extending almost a year before the tenant first raised this with the landlord's representatives.

While the tenant has found the noises she hears and attributes to the tenants who live in the suite above her upsetting and stressful, I find that her report of these noises is the only evidence that the tenant has to demonstrate entitlement to the issuance of some form of order against the landlord or for her claim for a monetary award. The tenant produced no witnesses and did not provide any written statements from anyone else who could attest to these noises. The tenant alleged that another tenant told her that the tenants above her have a sofa bed, which the tenant maintained could be responsible for some of the night time noises she hears. Although the tenant did enter into written evidence an October 2018 note from her doctor, this note is of little assistance as it simply records that the tenant reported that noise from her upstairs neighbour was causing her insomnia and anxiety.

By contrast, the landlord entered into written evidence copies of letters from the tenants who reside above the tenant, as well as one from the tenant who resides in the rental unit beside the tenant and also lives under the same upstairs rental suite that has attracted the tenant's attention. As opposed to the tenant's particularly inadequate evidence regarding the existence of a sofa bed in the rental unit above her, the landlord has inspected the rental unit above the tenant and found no sofa bed, and even entered into photographic evidence a photo of the sofa in that rental unit, which is clearly not a sofa bed. The landlord also checked the floor, the beds and the furniture in the rental unit above the tenant and was unable to find any evidence of any damage or scratches that would support the tenant's claim that items are being dragged or dropped on the floor on an ongoing basis during the night.

The landlord also supplied a detailed chronology of the times when the tenants who reside in the rental suite above the tenant have been out of town and not sleeping in the

rental unit. Some of these dates coincide with dates when the tenant is claiming that the noise they are making in the rental unit above her is keeping the tenant awake. The tenant's only response to this evidence that is particularly damaging to her application is that the upstairs tenants must have been lying about when they were out of town on those occasions.

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 the landlords have initiated to address this matter and have found no basis whatsoever for taking any action against the tenants who live in the rental unit above the tenant.

Based on a balance of probabilities, I find that the tenant has fallen far short of meeting her burden of proof in her application for the issuance of orders against the landlord and for the issuance of a monetary award on her behalf. I find that the tenant has provided insufficient evidence to demonstrate that the landlord has failed to take appropriate action to follow up on the tenant's concerns about noise the tenant attributes to the residents in the rental unit directly above her. I dismiss the tenant's application without leave to reapply.

In making this decision, I would encourage the tenant to reconsider the landlord's ongoing offer to assist the tenant in relocating to another rental suite in this large complex. In a smaller rental building, the turnover in tenancies might be such that the tenant might have to wait a long time before a similarly sized rental unit became available. Relocation in a small rental building might also be of little use as there would still be similar opportunities for interactions between tenants that could lead to the same types of problems. In a 222 unit 21-storey rental building, the majority of which are similarly sized to the one where the tenant has been residing for the past 23 years and are all rent-geared-to-income units, there is far more opportunity for a transfer that would relocate the tenant to a part of the building far removed from the activities of the tenants who currently reside above her. While I understand that the tenant is hoping to obtain a larger one bedroom rental unit, the landlord assured me that the tenant's relocation to a different bachelor rental unit would not impact her eligibility for a one bedroom unit once one becomes available. As the landlord has offered assistance to enable the tenant to move to another rental unit in the same building, I would suggest

that the tenant give more thought to the extent to which a transfer within the same building would improve her health and lessen the anxiety and stress that she has been experiencing with respect to her current housing situation.

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: December 11, 2018

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Residential Tenancy Branch