



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, OLC

### Introduction

On December 27, 2018, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) requesting a monetary order for damage or compensation under the *Act*, and an Order for the Landlord to comply with the *Act*. The matter was set for a conference call.

The Landlord’s Counsel and two Property Managers (the “Landlord”) attended on behalf of the Landlord, and the Tenant and her Daughter (the “Tenant”) attended the hearing, each were affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to a monetary order for damage or compensation under the *Act*?
- Should the Landlord be ordered to comply with the *Act*?

### Background and Evidence

Both parties agreed that the tenancy began on July 1, 2012, a month to month tenancy. The parties agreed that the Tenant receives a rent subsidy; however, they did not agree on how much the Tenants' rent was, the Tenant testified that her rent is \$481.00 per month and the Landlord testified that the rent is \$451.00 per month. The parties did agree that no security deposit or pet damage deposit had been collected for this tenancy. The Tenant submitted a copy of the tenancy agreement into documentary evidence.

The Tenant testified that throughout the tenancy she and her daughter had suffered a great deal of disturbance from her neighbour and that as of April 2018 the neighbour's behaviour towards them has become unbearable. The Tenant testified that she has made 26 complaints to the Landlord, regarding her neighbour, and that the Landlord has done nothing to rectify the matter. The Tenant is requesting \$35,000.00 due to the loss of quiet enjoying of her rental unit, \$17,500.00 for herself and \$17,500.00 for her daughter.

The Tenant testified that there had always been a strained relationship between herself and her neighbour but that in April of 2018 the neighbour broke up with her live-in partner and the relationship between the Tenant and neighbour became worse. The Tenant testified that in April the neighbour started to have a lot of people over, who would drink until the early morning hours, play loud music and have loud conversations outside. The Tenant testified that this noise would keep her and her daughter up at night and that when she asked the neighbour to keep the noise down the neighbour would refuse and become aggressive towards her.

The Tenant testified that in the last five years she had submitted 26 complaints about her neighbour's behaviour and level of noise the neighbour was creating, the Tenant also stated that she had called the police on her neighbour eight times. The Tenant testified when asked, that her neighbour had only be arrested one of these occasions, on December 25, 2018.

The Landlord testified that there had been a bad relationship between the Tenant and her neighbour since they moved beside each other. The Landlord confirmed that they have received multiple complaints regarding noise and bad behaviour from both the Tenant and the Tenant's neighbour and that the complaints are always regarding each other. The Landlord also testified that they had not received any complaints regarding

noise or bad behaviour of the Tenant or the Tenant's neighbour, from anyone else living on the rental property.

The Tenant testified that in late August 2018, she had a friend staying with her and that had a confrontation with her neighbour, her friend had gone outside and told the neighbour and her guest to be quiet. The Tenant testified that the neighbour responded by yelling at her friend, using vulgar language and becoming aggressive towards him. The Tenant testified that she sent a letter of complaint to the Landlord regarding her neighbour's behaviour and requested that the Landlord do something about the situation. The Tenant submitted her letter of complaint and an email from her friend into documentary evidence.

The Landlord testified that they received the Tenant's complaint in late August 2018, and had sent a warning letter to the neighbour, dated September 5, 2019, in regards to the Tenant's complainant. The Landlord submitted a copy of the warning letter into documentary evidence.

The Tenant testified that on December 25, 2018, she again overheard yelling and fighting coming from the neighbour's rental unit, so she called the police. The Tenant testified that the police arrested the neighbour and that child services had been called to take the neighbours children. The Tenant submitted her letter of complaint to the Landlord regarding the December incident, into documentary evidence.

The Landlord testified that they received the Tenant's complaint letter regarding the incident the incident on December 25, 2018. The Landlord testified that they had received no complaints from the Tenant between the time after they had issued the warning letter in September 2018, and the Tenant's complaint on December 25, 2018.

The Landlord testified that they have been attempting to mediate the dispute between the Tenant and her neighbour for years and that they feel this is just two renters that do not get along, and that they do not feel that one renter is more responsible for the cause of the disturbance than other. The Landlord also testified that even though the neighbour in question lives adjacent to other renters on the rental property; it is only the Tenant that complains about this neighbour. The Landlord testified that they often rent to hard to house individuals and that they understand that sometimes due to life choices and mental health issues, some neighbours do not get along. The Landlord testified that they have offered alternative housing locations to both the Tenant and the neighbour, but that they had both refused to move. The Landlord testified that although they

understand that these two people do not get along, they do not believe that either of them had done anything that they could end either of their tenancies for, and they were doing their best to resolve the dispute between them.

Additionally, the Landlord testified that on December 14, 2018, the Tenant signed a General Release, discharging the Landlord from any actions, suits and claims in exchange for a one-time payment of \$1,000.00. The Landlord submitted a copy of the signed General Release into documentary evidence. The Landlord argued that the general Release was an all-encompassing to any issues before the date that the release had been signed.

The Tenant agreed that she had signed the General Release document, and had taken the \$1,000.00 payment but that she had not intended for the release to include the matter regarding her loss of quiet enjoyment.

### Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find as follows:

When considering a request for a monetary award for compensation due to a loss, I must consider sections 7 and 67 of the *Act*. Which states that a party that makes an application for monetary compensation against another party has the burden to prove their claim. The Residential Tenancy Policy Guideline #16 Compensation for Damage or Loss provides guidance on how an applicant must prove their claim. The policy guide states the following:

“The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due. 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.

The Tenant has claimed that she has been unreasonably disturbed by her neighbour during her tenancy and that this disturbance has resulted in a loss of quiet enjoyment of her rental unit. Section 28 of the *Act* protects the tenants right to the quiet enjoyment of the rental property.

**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.

I have carefully reviewed the testimony and documentary evidence provided by both parties, and I find that the parties to this dispute offered conflicting testimony regarding the nature of the interactions between the Tenant and her neighbour and the cause of the disturbances between them. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, that burden falls on the Tenant, as the applicant to these proceedings.

After reviewing the evidence, I find that there is insufficient evidence before me to show that the Landlord has breached the *Act* or had failed to provide quiet enjoyment of the property to the Tenant. In the absence of sufficient evidence to prove the Tenant's claim, I must dismiss the Tenant's claim for \$35,000.00 in compensation due to the loss of quiet enjoyment.

Additionally, I find that there is no cause to issue an Order for the Landlord to comply with the *Act*.

Conclusion

The Tenant's application is dismissed, 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: February 14, 2019

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Residential Tenancy Branch