



# 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”) for:

- an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62;

Tenant and landlord LH attended the hearing (the “landlords”). Both parties had full opportunity to provide affirmed testimony, present evidence, cross-examine the other party, and make submissions. The landlords acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution and evidence. I find the landlords were served in accordance with the *Act*. The landlords testified that they submitted evidence in response to this application. However, the landlords' evidence was not received by the Residential Tenancy Branch (the “RTB”) or the tenant.

### *Preliminary Matter: Admissibility of Landlord's Evidence*

*Residential Tenancy Branch Rules of Procedure*, sections 3.15 states that the respondent's evidence must be received by the applicant and the RTB seven days before the hearing. I find that the landlords did not serve their evidence in accordance with the *Residential Tenancy Branch Rules of Procedure*. I find that the admission of this evidence without service upon the tenant would prejudice the tenant and result in a breach of the principles of natural justice. Accordingly, landlords' evidence is excluded pursuant to *Residential Tenancy Branch Rules of Procedure*, section 3.12.

### Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlords to comply with the Act, regulation or tenancy agreement pursuant to section 62?

### Background and Evidence

The parties agreed that the tenancy started on December 18, 2014. The rent is \$500.00 per month and the tenant paid a \$300.00 security deposit.

The tenant testified that the property consists of multiple rental units in a single building with shared use of the backyard. The tenant testified that the neighbouring tenant and his guests have engaged in illegal and disruptive conduct which has prevented the tenant from feeling safe and comfortable in her rental unit.

The tenant testified that three of the five windows in her rental unit have been broken by her neighbour.

The tenant testified that the neighbouring tenant and his guests have engaged in frequent illegal drug use and overdoses at the property. In addition, the neighbours have left used drug syringes in the common area backyard.

The tenant provided photographs showing debris in the backyard and damage to the interior of the neighbouring rental unit.

The tenant testified that neighbours frequently made loud noise, including very late at night, by fighting, screaming and banging walls. The tenant provided extensive log she compiled detailing dozens of disturbances from her neighbour since 2017.

The tenant testified that in one incident, the tenant's neighbour shot her in the face with a pellet gun. The tenant provided a photograph of the resulting bruise near her eye.

The tenant also testified that a murder recently occurred at the property. The tenant testified that the crime scene in her building caused a nearby daycare to close.

The tenant testified that she sent a written complaint letter dated November 1, 2017 to the landlords demanding action to protect her right to safety and quiet enjoyment of the rental unit. However, the tenant testified that the landlords have not taken any steps to address her concerns and the tenant said problems have persisted.

The landlords did not dispute the tenant's testimony regarding the condition of the property or the conduct of the tenant's neighbour. However, the landlords testified that there was nothing they could do because they could not obtain an order of possession against the tenant's neighbour.

The tenant is requesting an order for the landlords to remove the tenant's neighbour from the property. The tenant testified that she is not seeking an order for monetary compensation.

### Analysis

Pursuant to *Residential Tenancy Branch Rules of Procedure ("RTB Rules")*, Rule 6.6 states that the applicant, in this case the tenant, has the onus of proof to prove their case on a balance of probabilities. This means that *RTB Rule 6.6* requires the tenant to prove that, more likely than not, the facts occurred as claimed in order to prevail in her claim.

Pursuant to section 62(3), an Arbitrator "...may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies."

Section 28 of the *Act* states that the tenant has the right of quiet enjoyment in her rental unit which is described as:

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 am satisfied by the tenant's evidence that the landlords have failed to provide the tenant with reasonable privacy and freedom from unreasonable disturbance as required by section 28 of the *Act*. On the basis of tenant's undisputed evidence, I find that the

conditions at the property were atrocious and constituted an extreme impingement of the tenant's right to quiet enjoyment. I find that the conditions were intolerably loud, violent, and dangerous.

Furthermore, based on the tenant's undisputed testimony and the tenant's complaint letter from November 2017, I find that landlords have been notified of these ongoing disturbances at the rental unit and the landlords have not taken steps to stop these ongoing problems.

I find that the tenant has provided sufficient evidence to satisfy me that the landlords have failed to provide the tenant with quiet enjoyment of the rental and that the tenant is an entitled to an order under section 62 for the landlord to provide such quiet enjoyment.

Accordingly, I order the landlords to provide the tenant with quiet enjoyment of the rental unit pursuant to section 62 of the *Act*. The tenant is at liberty to file a further application for dispute resolution to seek an order for monetary compensation against the landlords if the landlords fail to comply with this order.

The tenant also requested an order to remove her neighbour from the property. However, I do not have the authority under the *Act* to order the removal of a nonparty in a dispute, therefore, I cannot make such an order.

### Conclusion

I order the landlords to provide the tenant with quiet enjoyment of the rental unit pursuant to section 62 of the *Act*.

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: April 8, 2019

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Residential Tenancy Branch