



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The Tenant appeared at the teleconference hearing and gave affirmed testimony, but no one attended on behalf of the Landlords. The teleconference phone line remained open for over 29 minutes and was monitored throughout this time. The only person to call into the hearing was the Tenant, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Tenant.

The Tenant said she served her Application, Notice of Hearing, and documentary evidence on the Landlords via a registered mail package for each Landlord, respectively, and she provided two Canada Post tracking numbers for these packages. The Tenant said she mailed the packages on October 7, 2019. Pursuant to section 90 of the Act, I find that the packages were deemed served on the Landlords on October 12, 2019, in compliance with the Act.

I explained the hearing process to the Tenant and gave her an opportunity to ask questions about the hearing process. During the hearing the Tenant was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant provided her email address in her Application; however, she did not have

an email address for the Landlords. The Tenant confirmed her understanding that the Decision would be emailed to her and mailed to the Landlords.

### Issue(s) to be Decided

- Is the Tenant entitled to an Order for the Landlord to Comply with the legislation and tenancy agreement?

### Background and Evidence

The Tenant said the fixed term tenancy began on October 1, 2017, running to September 30, 2018, and became a periodic tenancy thereafter. The Tenant said her current monthly rent is \$717.50, due on the first day of each month. The Tenant said she paid the Landlords a security deposit of \$350.00, and no pet damage deposit. The Tenant said that the rental unit is a basement suite of a single-family house.

In the hearing, the Tenant said that everything in the tenancy was fine initially, although there were incidents of a plumbing problem. She said:

Sometimes if they pour a large amount of liquid down the drain, I then I have water coming up through the drain of the tub and kitchen sink. [The Landlady] comes in and plunges it and it plugged again, it didn't clear. [The Landlord] unhooked the drain . . . he came into the suite at 6:00 p.m. and they were here until 1:00 a.m. It seemed to be fine, but the next month at the end of August, from the living room I heard a large amount of water from upstairs. I called upstairs about the problem and she plunged it . . . I said maybe you need to call a plumber. She tried for an hour. He did the same thing with the snake. We were stuck here all day. When they left, we called plumber, but he said he can't come in until Labour Day. I don't want them in my suite when I'm not here, so I phoned my Mom, because I wasn't going to be here. See Mom's letter about that experience.

The Tenant submitted a letter from her mother, which includes the following comments:

#### **Sept 2, 2019 1-3 pm**

When the plumber arrived, I mentioned to the plumber that the back-up had

occurred a number of times. The landlord was on site and started to back-peddle and down play my comment trying to convince the plumber that 'minor' backups had occurred but that he was able to control the problem.

...

The plumber located the plug which was 30 feet into the drainage lines. When [the plumber] and his helper had completed their work and left, the landlord proceeded on lambasting me because I had provided the plumber with past history of the plugged drainage problem. This information was given me by [the Tenant] who had experienced this problem a number of times. The landlord became extremely agitated and irrational when I explained again (as the plumber had also stated defending me that this info was required so that they would know the action needed to unplug the drain) that they needed to know the history of the suite/house. His response was that I did not know the history and therefore should not have volunteered this info....

...

A few minutes later, the landlord was outside in the driveway exclaiming loudly to a neighbour/other tenant that ([the Tenant]) was the worst tenant he has ever had. He then proceeded to his garage and turned up the volume on his car radio to its highest volume to such a degree that the living room walls were vibrating. This was done intentionally as he knew I was on the other side of the wall trying to read. This went on for quite a few minutes - I stayed my ground and did not leave the apartment while he was still outside....

#### **Oct 5, 2019. 6 pm**

[The Tenant] and I returned from shopping and heard extremely loud music playing from overhead. We went upstairs to ask they turn the music down, but no one answered the door. We returned to [The Tenant's] suite and found the music volume from upstairs had been increased even louder. Due to the previous experience I had, plus episodes my daughter [The Tenant] received and related to me, these people are totally irrational and their unsavoury actions indicate continued unpleasantness as they feel they can do anything because they are the owners.

In the hearing, the Tenant mentioned other incidents of loud music when the Landlord's daughter would turn the music up and not reduce the volume when asked.

The Tenant said that on Wednesday, October 2<sup>nd</sup>, she could hear music outside. She said the Landlord's daughter was outside washing her car.

Three hours passed, and the music is louder than normal. It wasn't even her car in the driveway that was playing the music. They had an SUV in the garage. I asked if they could turn the music down. She said no. Called the RCMP the non-emergency line. They forwarded me to the Surry Bylaw officer. They said I should contact the RTB. It was already after five o'clock and the branch closes.

They keep a ladder in the deck area by my front door. When he came to get it, I said: 'Can you please ask [your daughter] to turn the music down, I'm trying to work. He just grabbed the ladder.'

I woke up the next day to loud music being played in the laundry room. I grabbed my phone and spoke to someone at RTB. They said type a letter. . . if it continues say you're going to file a dispute. I gave [the Landlady] the letter. She came downstairs and you could hear the music playing. [The Landlady] said why is the music so loud – turn it down. I explained to her what happened the day before. I gave her the letter and she went upstairs. The music is continuing in the laundry room. I waited for 10 minutes then called [the Landlady] upstairs and she denied that she could hear anything.

I applied [for dispute resolution] that day.

The next day it was quiet. I have three days to serve them. On Saturday I went out and came back the music was playing again loudly. By the time I got downstairs they turned it up even louder. They were served the Notice of Hearing and ever since then it has been fine.

The Tenant said that she works from home and the recurrent incidence of the Landlords' loud music negatively affects her quiet enjoyment of the rental unit and makes it difficult to do her work.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 62(3) of the Act states:

### **Director's authority respecting dispute resolution proceedings**

**62** (3) The Director 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.

[emphasis added]

Section 28 of the Act addresses a tenant's right to quiet enjoyment of the rental unit:

**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.

[emphasis added]

RTB Policy Guideline #6 states:

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.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

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.

### **Compensation for Damage or Loss**

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the [Residential Tenancy Act].... 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.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

[emphasis added]

The Tenant did not apply for compensation for her loss of quiet enjoyment from the Landlords' behaviour in this Application, but it is an avenue that is open to her to pursue, if the loud music or other such disturbance continues.

Based on the evidence before me, I find that the Landlords have infringed the Tenant's right to quiet enjoyment. I Order the Landlords to cease and desist from burdening the Tenant with repeated loud music. If this problem or another such breach of her quiet enjoyment persists, the Tenant may use this Decision to support a subsequent application for dispute resolution. The Tenant may choose to seek another Order, as well as compensation for the breach of her right under the *Residential Tenancy Act* to quiet enjoyment of the rental unit.

### Conclusion

The Tenant is successful in her Application for an Order for the Landlords to comply with the Act. I found that the Landlords repeatedly breached the Tenant's right to quiet enjoyment of the rental unit.

The Landlords are Ordered to stop disturbing the Tenant with loud music or other infringements of her right to quiet enjoyment of the rental unit.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 14, 2019

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Residential Tenancy Branch