



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, PSF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on October 15, 2019 (the “Application”). The Tenant applied for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. The Tenant also applied for an order that the Landlord provide services or facilities required by the tenancy agreement or law.

The Landlord and Tenant appeared at the hearing. The Landlord provided the correct legal name of the co-landlord which is reflected in the style of cause. I explained the hearing process to the parties and answered their questions in this regard. The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence and no issues arose.

The Tenant confirmed he is seeking an order in relation to his right to quiet enjoyment. Given this, I have only considered whether the Tenant is entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement.

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

### Issues to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?

### Background and Evidence

The Tenant sought an order that the Landlord “step up” and assist with the noise and smoking issues with the unit above him. The Tenant also sought an order that the Landlord address the strata in a more forceful manner.

The parties agreed on the following. There is a written tenancy agreement between the Landlords and Tenant in relation to the rental unit. The tenancy started November 01, 2017 and was for a fixed term of one year and then became a month-to-month tenancy. Rent is \$1,530.00 per month due on the first day of each month.

The Tenant testified about hearing noise from the unit above him all day every day. The Tenant testified that the child in the unit above him bangs objects on the floor. The Tenant testified that he has told the Landlord this. The Tenant testified that the Landlord said noise from children “gets a free pass”. The Tenant said this leads him to wonder how the Landlord represented him at strata meetings in relation to this issue.

The Tenant also testified about people in the unit above smoking contrary to the building rules. The Tenant acknowledged this issue is a recent issue. The Tenant testified that he was told he requires photo evidence of someone smoking on the balcony for the strata to address this issue. The Tenant took the position that this is a privacy violation based on what RCMP told him. The Tenant testified that you cannot necessarily see someone on the balcony of the unit above him from a common area on the property.

The Landlord acknowledged that there is noise coming from the unit above the rental unit and acknowledged that someone is most likely smoking on the balcony.

The Landlord testified as follows. He has tried to assist the Tenant with these issues. He has brought these issues to strata multiple times. The strata will send warnings about these issues but will not issue fines without further evidence supporting the Tenant’s claims. He cannot compel the strata to act. One issue is that the Tenant has not kept a detailed log of the noise to show it is a continuous problem. He has

convinced the strata to do patrols more frequently to see if someone is smoking on the balcony of the unit above. The balcony can be viewed through bushes and from the parking lot.

The Landlord acknowledged that it would be difficult to obtain a photo of someone on the balcony if they wanted to hide.

The Landlord testified that he believes the people who live in the unit above the rental unit own the unit. The Landlord confirmed the building is managed by the strata. The Landlord acknowledged that people are not allowed to smoke in the building.

The Landlord testified about his dealings with strata regarding the noise and smoking issues. He testified that he has forwarded the Tenant's complaints sent by email. He testified that he has spoken to a representative for the strata over the phone twice. He testified that he attended the October strata meeting at which he raised the noise and smoking issues with a focus on the smoking issue. The Landlord pointed out that the Tenant also sends emails directly to the strata about these issues.

The Landlord testified that the strata wants a photo of someone smoking on the balcony of the unit above the rental unit. The Landlord testified that the person alleged to be smoking swears he does not smoke. The Landlord testified that no other neighbours have complained about smoking.

Both parties provided evidence about the Landlord attempting to enter the rental unit to collect evidence about these issues and the Tenant denying him entry. The Landlord testified that he has not otherwise gone over to the rental unit to hear the noise or smell the smoke. The Landlord testified that he is willing to do so. The Landlord testified that he told the Tenant to let him know when he wanted him to attend and the Tenant never did.

The Landlord testified that strata meetings are monthly and the Tenant could attend such meetings if he chose to.

In reply, the Tenant testified that he has logs of the noise. He claimed to have not known that the Landlord or strata wanted to see these and said nobody asked for them. The Tenant also referred to a text sent to the Landlord September 30<sup>th</sup> about the Landlord attending as someone was home in the unit above him. The Tenant said he is

willing to attend strata meetings. The Tenant advised that he does not have recordings of the noise because it is difficult to accurately record the noise level.

In the written materials, the Landlord acknowledges that the unit above makes excessive noise and smokes.

### Analysis

Section 62 of the *Residential Tenancy Act* (the “*Act*”) states:

(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.

Section 28 of the *Act* sets out a tenant’s right to quiet enjoyment and states:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(a) 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.

[emphasis added]

I accept that the people in the unit above the rental unit make excessive noise and smoke contrary to building rules. The Tenant testified that this is the case. The Landlord acknowledges this in his written materials.

I am satisfied based on the email correspondence submitted, and the testimony of both parties, that the Landlord is aware of the noise and smoking issues.

Pursuant to Policy Guideline 6, I find the Landlord is required to take reasonable steps to correct the noise and smoking issues. I find that the reasonable steps required here are not the same as the reasonable steps required when another tenant of a landlord is causing a disturbance because the people in the unit above the rental unit are not tenants of the Landlord. I accept that the Landlord can only do so much as it is the strata who has control over issuing fines or taking further steps to address the noise and smoking issues, it is not the Landlord who has control over this.

Based on the documentary evidence and testimony of the parties, I find both the Tenant and Landlord could do more to address the noise and smoking issues. I acknowledge that it is the Landlord's responsibility to protect the Tenant's right to quiet enjoyment; however, this does not mean that the Tenant does not have to do his part and cooperate with the Landlord on this issue.

The Tenant has sought an order that the Landlord address the strata more forcefully on the noise and smoking issues. I accept that the Landlord has taken some steps with the strata based on the documentary evidence and testimony of the Landlord. I did not understand the Tenant to dispute this. I do accept that the Landlord could do more. I am not satisfied that emails, two verbal discussions and attending one strata meeting is enough. However, I also accept, based on an email from the strata agent submitted, that the strata requires further evidence to support the Tenant's claims.

Based on the documentary evidence and testimony of the parties, I find both the Tenant and Landlord could take further steps to obtain evidence of the noise and smoking issues.

Given the above, I find it appropriate to order the following pursuant to section 62 of the *Act* based on the Landlord's obligation to protect the Tenant's right to quiet enjoyment:

1. The Tenant is to keep a detailed log of the noise and smoking issues for at least one month from the date of this decision. The Tenant is to provide this, along with any past logs, to the Landlord.
2. Once the Landlord receives the Tenant's log, and any past logs, the Landlord is to attend a strata meeting within a reasonable time and make further submissions to strata about the noise and smoking issues. The Landlord is to let the Tenant know about the strata meeting and allow the Tenant to attend with him if permitted by the strata. The Landlord is to provide the Tenant with a copy of any strata meeting minutes from the meeting.
3. Further, the Landlord is to put the Tenant's complaints in writing to the strata attaching all relevant evidence for the strata to consider. The Landlord is to request a written response to the complaints from strata.
4. Both the Tenant and Landlord are to take all reasonable steps to obtain further evidence of the noise and smoking issues prior to the strata meeting. The Tenant should attempt to obtain recordings of the noise issue. The Tenant should attempt to obtain photographic evidence of the smoking issue. The Tenant should notify the Landlord of dates and times when the Landlord can and should attend the rental unit to observe the noise and/or smoking issues. The Landlord is to make all reasonable efforts to attend once the Tenant has advised him of a date and time.

In relation to the strata meeting, the Tenant should attend the strata meeting if he has concerns about the Landlord representing his interests.

### Conclusion

The Tenant is entitled to an order that the Landlord protect his right to quiet enjoyment. I order the following:

1. The Tenant is to keep a detailed log of the noise and smoking issues for at least one month from the date of this decision. The Tenant is to provide this, along with any past logs, to the Landlord.
2. Once the Landlord receives the Tenant's log, and any past logs, the Landlord is to attend a strata meeting within a reasonable time and make further

submissions to strata about the noise and smoking issues. The Landlord is to let the Tenant know about the strata meeting and allow the Tenant to attend with him if permitted by the strata. The Landlord is to provide the Tenant with a copy of any strata meeting minutes from the meeting.

3. Further, the Landlord is to put the Tenant's complaints in writing to the strata attaching all relevant evidence for the strata to consider. The Landlord is to request a written response to the complaints from strata.
4. Both the Tenant and Landlord are to take all reasonable steps to obtain further evidence of the noise and smoking issues prior to the strata meeting. The Tenant should attempt to obtain recordings of the noise issue. The Tenant should attempt to obtain photographic evidence of the smoking issue. The Tenant should notify the Landlord of dates and times when the Landlord can and should attend the rental unit to observe the noise and/or smoking issues. The Landlord is to make all reasonable efforts to attend once the Tenant has advised him of a date and time.

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: December 16, 2019

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Residential Tenancy Branch