



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

OLC, MNDCT, FFT

### **Introduction:**

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenants in which the Tenants applied for a monetary Order for money owed or compensation for damage or loss, for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* and/or the tenancy agreement, and to recover the fee for filing this Application for Dispute Resolution.

The female Tenant stated that on February 07, 2020 the Dispute Resolution Package and evidence the Tenant submitted to the Residential Tenancy Branch in February were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings, with the exception of evidence referred to in Preliminary Matter #2.

On February 19, 2020 and February 26, 2020, the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was served to the Tenants, via registered mail, although he does not recall the date of service. The Tenants acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

On March 17, 2020 the Tenants submitted additional evidence to the Residential Tenancy Branch. The female Tenant stated that this evidence was served to the Landlord, via registered mail, on March 17, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party present at the hearing

affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

### Preliminary Matter #1

As this rental unit has been vacated, the Tenants agreed there is no need for an Order requiring the Landlord to comply with the *Act* or the tenancy agreement.

### Preliminary Matter #2

The female Tenant stated that audio recordings of the noise emanating from the upper suite were submitted in evidence and a video recording of their cat. The female Tenant stated that copies of these recordings were served to the Landlord on a CD.

The Landlord stated that he received a CD with the Tenants' evidence package, however he could not hear or view anything on the CD that was served to him. In the absence of evidence to the contrary, I find that the Landlord was not able to view these recordings.

The female Tenant stated that the Tenants did not check with the Landlord prior to the hearing to see if he could hear or view the recordings on the CD that was served to the Landlord.

Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure reads:

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2.

Before the hearing, a party providing digital evidence to the other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence.

If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days (or two days for an expedited hearing under Rule 10), with full access to the evidence

and the party submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

I find that the Tenants failed to comply with the part of Rule 3.10.5 of the Residential Tenancy Branch Rules of Procedure that requires them to confirm the Landlord was able to access the recordings contained on the CD they served to him as evidence.

As the Tenants did not attempt to confirm that the Landlord could access the recordings on the CD they served to him as evidence, and the Landlord testified that he could not access those recordings, I do not accept these recordings as evidence. I have not listened to the recordings.

Issue(s) to be Decided:

Are the Tenants entitled to compensation for being disturbed by noise?

Background and Evidence:

The Landlord and Tenants agree that:

- the tenancy began on April 01, 2017;
- the tenancy ended on March 31, 2020;
- at the end of the tenancy the monthly rent was \$1,750.00;
- the residential complex has two suites in it;
- the Tenants lived in the lower unit;
- at the start of the tenancy the Tenants did not raise any concerns about noise emanating from the upper suite;
- on September 15, 2019 a mother and two young boys, aged four and eight, moved into the upper unit; and
- an adult male also frequently stayed in the upper unit after September 15, 2019.

The female Tenant stated that:

- during the latter portion of the tenancy they were disturbed by noise emanating from the upper suite on a daily basis;
- the noise was typically intermittent, frequently between the hours of 6:00 a.m. and 10:00 p.m.;
- occasionally the noise would occur after 10:00 p.m. or before 6:00 a.m.;
- on one occasion there was a loud party;
- the noises sounded like furniture dropping, boxes being moved, loud stomping, jumping, a child screaming, and a bouncing ball;
- most of the noises appeared to be made by children;

- some of the noises are adults “stomping”;
- on November 30, 2019 the smoke alarm was activated by her husband banging on the ceiling to alert the upper occupant of excessive noise;
- the smoke alarm was activated again on January 23, 2020, although she does not know why;
- the smoke alarm was activated 3 or 4 other times in October, November, and December of 2019, although she does not know why;
- the Tenants did not inform the Landlord that the smoke alarm had been activated in November, December, or January, with the exception of the incident that occurred on November 30, 2019;
- she works from home and the noise level made it difficult for her to concentrate;
- the noise was verbally reported to the Landlord on October 20, 2019;
- the noise was again reported, verbally, sometime in December of 2019;
- on January 14, 2020 the Landlord was given written notice of the noise;
- the Tenants took a video recording of the January 14, 2020 notice being given to the Landlord and the Landlord refusing to sign to acknowledge receipt of the written notice;
- a copy of the video recording from January 14, 2020 was not submitted in evidence;
- the Landlord “dismissed” the Tenants’ concerns;
- they attempted to express their concerns politely and directly with the female living in the upper suite, who was not cooperative and threatened to call the police;
- they showed the Landlord a threatening letter they received from the occupant of the upper suite;
- they moved out of the rental unit because the situation was so “horrible”;
- after the women and her children moved into the upper suite, their cat began hiding and not eating;
- they took the cat to the veterinarian, who did not find anything medically wrong with the cat; and
- the veterinarian suggested that the cat may be undergoing stress as a result of the noise emanating from the upper suite.

The Landlord stated that:

- the Tenants complained of noise from the upper suite in October of 2019;
- he spoke with the occupant of the upper suite shortly after receiving that complaint;
- the female living in the upper suite told him that she was still unpacking;
- the female living in the upper suite told him that one of her children has a learning disability and sometimes acts out;
- the female in the upper suite told him that she will try to control her children;
- the Tenants did not inform him that the smoke alarm had been activated in November of 2019, December of 2019, or January of 2020, with the exception of the incident that occurred on November 30, 2019;

- he was aware of the incident with the smoke alarm that occurred on November 30, 2019;
- the Tenants did not express a concern to him about noise in December of 2019;
- the Tenants did attempt to serve him with a letter in January of 2020, which he refused to accept because he was in shock after just learning his wife had been diagnosed with cancer; and
- he did not speak with the female living in the upper suite again, because he did not receive another noise complaint.

A copy of the letter the Tenants allege was served to the Landlord on January 14, 2020 was submitted in evidence.

A copy of the letter the occupant of the upper suite gave to the Tenants was submitted in evidence. The Landlord stated that he got a copy of this letter from the occupant of the upper suite and the Tenants state that they provided the Landlord with a copy of the letter. In this letter the occupant of the upper suite, declares, in part:

- she has been “constantly policing” her children since she moved in;
- she is “very aware we have people living beneath us”;
- she is doing her best to keep the children quiet;
- one of her children has “behavioural challenges”;
- they stomp, sing, run, dance, yell and fight, “as kids do”;
- they do wake up early in the morning and usually sit quietly in front of the television;
- it is quiet in their home “most of the time”;
- it is not her fault if normal voices and walking are disturbing the Tenants; and
- she will call the police the next time the Tenants bang on the wall/ceiling.

The Tenants submitted a copy of a written response they received from the Landlord on January 19, 2020. In this written response that Landlord declared, in part:

- the Tenants were disturbed by a “house warming gathering” in September;
- the Tenants would not be disturbed by children playing during the night, when the children are sleeping, or when the children are in school One Month Notice to End Tenancy for Cause;
- the occupants of the upper unit ad away from home during the day;
- during a blizzard the “father” had to walk home from work on one occasion and it is likely the Tenants were disturbed by him removing the snow from his clothes and boots late at night;
- he can see into the upper unit from his home and they are not “partying all night”; and
- the only fire alarm incident he is aware of was the time the Tenants activated the alarm.

The Landlord submitted a letter from an agency which appears to act on behalf of the Landlord in this tenancy. In the letter the author alleges that the Tenants have disturbed

the occupants of the upper suite.

The male Tenant stated that many of the allegations made against the Tenants in documents the Landlord submitted in response to this Application for Dispute Resolution are false.

The Tenants applied for compensation of \$3,000.00 due to noise disturbances during the latter portion of the tenancy. They have also applied for \$517.33, which is the cost of the veterinarian bills they incurred after the new occupant moved into the upper suite.

Analysis:

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline 16, with which I concur, reads, 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.

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. (Emphasis added)

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.

When a tenant files a claim for a breach of their right to the quiet enjoyment of the rental unit, the tenant bears the burden of proving this right has been breached.

I have no doubt that the Tenants were being disturbed by noise emanating from the upper suite. Their evidence in this regard was credible and heartfelt.

I find, however, that the Tenants have submitted insufficient evidence to conclude that the disturbances were unreasonable and/or that they breached the Tenants' right to quiet enjoyment.

In adjudicating this matter, I considered the undisputed evidence that there was a party on one occasion in the upper suite. Even if the noise from this party was excessive, I cannot conclude that it constituted a breach of the Tenants' right to quiet enjoyment. Given that there was only one party, I find this to be a temporary inconvenience.

In adjudicating this matter, I considered the undisputed evidence that on occasion the Tenants were disturbed by adults in the late evening or early morning hours. On the basis of the evidence submitted by the Landlord, I find that at least one of the disturbances occurred when the adult male in the returned home from work late at night. While I accept a person walking normally during the late evening or early morning hours might sound like "stomping" to people living in a lower suite, I cannot conclude that the noise was unreasonable.

In adjudicating this matter, I considered the undisputed evidence that on November 30, 2019 the smoke alarm was activated after the Tenants banged on their ceiling. As the Tenants were directly responsible for this disturbance, I find that there was no need for the Landlord to prevent these Tenants from this type of a disturbance. As there is no evidence the Landlord was aware that the Tenants had been disturbed by the smoke alarm at any other time in November of 2019, December of 2019, or January of 2020n of three of those incidents, I cannot conclude that the Landlord had the ability to prevent a repeat of those disturbances.

In the absence of evidence, such as an audio recording, to establish that the "stomping" was unreasonable, I am unable to conclude that the noise was something other than an adult moving around the upper suite during very quiet hours. Given that there were children living in the upper suite, I find it difficult to conclude that an adult in the home would intentionally make noise during the late evening or early morning hours.

On the basis of the evidence before me, I find that the Tenants were primarily bothered by the noise of the two young children who lived in the upper unit, which included the children running, playing, and yelling. On the basis of the letter from the occupant of the upper suite, I find that one of her children has behavioural challenges. I presume the occupant provided this information to explain that this child makes more noise than a child without such challenges.

In the absence of evidence, such as an audio recording, to establish that the noise the children were making was worse than the noise children of that age typically make, I am unable to conclude that the noise was unreasonable.

While I accept that the noises from the upper suite were travelling through the floor into the Tenants' suite, I find that there is insufficient evidence to establish that the noises were anything more than noises that are typical associated to the daily living activities of a family with two young children, where one of the family members works unusual hours. I therefore find that there is insufficient evidence to establish that the noises in the upper suite were unreasonable.

In concluding that there is insufficient evidence to establish that the noises in the upper suite were unreasonable, I was influenced by the letter written by the occupant of the upper suite, in which the author declares, in part, that she is "very aware we have people living beneath us"; she is doing her best to keep the children quiet; the children wake up early in the morning and usually sit quietly in front of the television; it is quiet in their home "most of the time"; and it is not her fault if normal voices and walking are disturbing the Tenants. I find this letter, which appears credible and sincere, supports a finding that the noises emanating from the upper unit are noises associated to the normal daily living activities of a typical family

While it is clear that the Tenants were disturbed by the daily living activities of the occupants of the upper suite, this is a characteristic of living in a lower suite in a residential complex where sound carries. I therefore find that the disturbances were not unreasonable in these circumstances and I therefore cannot conclude that the Tenants' right to the quiet enjoyment of their rental unit was breached.

I find that the Landlord took reasonable and appropriate steps to address the concerns of the Tenants when he spoke with the occupant of the upper suite shortly after receiving the Tenants complaint in October of 2019. I find it was reasonable for him to advise the upper occupant of the complaints and to accept the occupant's assurance that she will attempt to "control" her children.

On the basis of the undisputed evidence, I find that in January of 2020 the Tenants attempted to give the Landlord written notice that they were still being disturbed by the upper occupants. Even if I accepted the Landlord's testimony that he did not receive the letter, I would find that he did not respond appropriately when he refused to accept the letter. Even if I accepted the Landlord's testimony that he refused to accept the letter because he had just learned his wife had been diagnosed with cancer, I find it would have been reasonable for the Landlord to contact the Tenants at a later date to either accept the letter or to determine what information they were attempting to provide in the letter. A landlord cannot refuse to address a tenant's concern by simply refusing to accept notice of it.



Regardless of whether the Landlord accepted the letter the Tenants were attempting to give him in January of 2020, I find that the Landlord was aware of the ongoing conflict between the parties. In reaching this conclusion I was influenced by his testimony that he received a letter from the occupant of the upper suite, which was submitted in evidence. As this letter refers to the incident with the fire alarm that occurred on November 30, 2019, I find it reasonable to conclude that he received the letter sometime after November 30, 2019.

In concluding that the Landlord was aware of the ongoing conflict between the parties, I was further influenced by the hand-written letter from the female Landlord, which the Tenants declared was received on January 19, 2020. It is clear from this letter that the Landlord is aware the Tenants are still being disturbed by the upper occupants.

A Landlord can only take reasonable steps to resolve a conflict between parties, particularly when the source of the conflict is subjective. It is clear in this situation that the Tenants believed the noise in the upper suite was unreasonable and the occupant of the upper suite did not consider it unreasonable. I find it was reasonable for the Landlord to conclude that the noises were not unreasonable on the basis of the information available to him. I also find it would have been fruitless to continue to intervene in the dispute between the two parties, as it is clear the parties were entrenched in their own positions.

On the basis of the information before me, I find that the Landlord would not have had the right to end the tenancy of the occupants in the upper unit, as the noises they were making were not unreasonable. I therefore find that ending the tenancy was not a viable means of resolving the conflict.

As the Tenants' have failed to establish that their right to the quiet enjoyment of their rental unit was breached and that the Landlord did not take reasonable steps to protect their right to quiet enjoyment of the rental unit, I dismiss their claim for compensation for a loss of quiet enjoyment.

In adjudicating this matter, I have placed little weight on the Tenants' submission that they attempted to express their concerns politely and directly with the female living in the upper suite. While I accept that the relationship between the Tenants and the upper occupant was not cordial, I find that the Tenants are misrepresenting their role in the conflict, at least to some degree. I find that banging on the ceiling on November 30, 2019 in a manner that would cause a smoke alarm to activate is not a "polite" way of

communicating with neighbour.

In adjudicating this matter, I have placed little weight on the Tenants' submission that the female living in the upper suite who was not cooperative and threatened to call the police. I find that the letter the occupant of the upper suite gave to the Tenants, in which she declares she is doing her best to keep the children quiet, indicates that she was attempting to address the Tenants' concerns. I also find her "threat" to phone the police the next time the Tenants bang on the wall/ceiling is not unreasonable, given the aggressive nature of such an act.

On the basis of the undisputed evidence, I find that the Tenants' cat was being disturbed by the new noises that could be heard after the woman and her children moved into the upper suite. As I have concluded that these noises were not unreasonable, I find that neither the Landlord nor the occupant of the upper suite are liable for veterinarian costs associated to the cat. I therefore dismiss the Tenants' claim for veterinarian costs of \$517.33.

In adjudicating this matter, I have placed no weight on the Tenants submission that the allegations made against them in documents the Landlord submitted in response to this Application for Dispute Resolution are false. I have made no determination regarding the accuracy of such allegations, because they are not relevant to the issues before me.

I find that the Tenants have failed to establish the merits of their Application for Dispute Resolution and I dismiss the application to recover the fee paid to file this Application for Dispute Resolution.

Conclusion:

The Application for Dispute Resolution 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: April 09, 2020