



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      MNDCT, OLC

### **Introduction**

This hearing dealt with two applications (applications “803” and “551”) of the tenant pursuant to the *Residential Tenancy Act* (the “**Act**”) for:

- an order requiring the landlord to provide her with the quiet enjoyment she is entitled to under the Act, pursuant to sections 28 and 62;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2,350 pursuant to section 67; and
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$2,900 pursuant to section 67.

This matter was reconvened from a previous hearing on June 8, 2020. I issued a written interim decision following that hearing, the contents of which I will not repeat in this decision.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was assisted by an agent (“**KL**”). Each party called one witness.

The parties confirmed that each had received the other’s documentary evidence in advance of the hearing. I deem all parties served in accordance with the Act.

### **Preliminary Issue – Non-Presented Evidence**

The tenant submitted over 150 videos files in support of their application, representing multiple hours of footage. These were served on the landlord in advance of the hearing, and I understand that the landlord has reviewed them all.

The tenant submitted two “Digital Summary Lists” (one for each application), which listed file names of each video file (each name was similar, but not exact, to what the video files were actually submitted into evidence) and provided a brief description of the contents. Some videos listed on these lists were not uploaded into evidence, and some videos were uploaded into evidence that did not appear on either list.

Rule of Procedure 7.4 states:

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

At the hearing, I advised the tenant of this rule, and asked her to direct me to specific videos which she believed to be the most important, most relevant, or would most assist me in making my decision. She stated that they were equally important. However, she did reference several videos during the hearing by name, which I have reviewed. The landlord similarly referenced videos by name, which I have also reviewed.

Upon reviewing the videos referenced by the landlord, I discovered that the discrepancy between the tenant's description of the contents of the videos and the actual contents of the video was so large, that it has caused me to doubt the descriptions of all the videos provided by the tenant.

As such, despite their not having been presented at the hearing, I have reviewed all of the video files uploaded in support of application 551 (71 in total) in an attempt to ascertain the extent of the alleged disturbances. I will summarize my findings below.

I have not reviewed any of the video files uploaded in support of application 803, beyond those files referenced by the parties during the hearing. The contents or descriptions of any videos uploaded by the tenant in support of application 803 and not referenced to or presented at the hearing do not form part of the evidentiary record upon which I base my decision.

**Preliminary Issue – Landlord's Alleged Monetary Losses**

The landlord has submitted extensive documentation regarding economic loss she alleges to have suffered as a result of the tenant's actions (travel costs, lost rent, unpaid utilities and internet). The landlord has calculated her loss as \$6,084.75.

However, the landlord has not filed an application with the Residential Tenancy Branch seeking a monetary order. As such, I have no authority to make any order sought by the landlord. If the landlord believes she is entitled to monetary compensation as the result of the tenant's actions, she must file her own application.

I make no findings as to the merits of any portion of the landlord's claim for monetary compensation.

**Issues to be Decided**

Is the tenant entitled to:

- 1) a monetary order of \$5,250; and
- 2) an order that the landlord comply with the Act and provide her with quiet enjoyment of the rental unit?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting October 1, 2019. At the start of the tenancy monthly rent was \$1,600. The tenant paid the landlord's agent a security deposit of \$800. The landlord has not returned any portion of the security deposit to the tenant.

At some point after the start of the tenancy, rent was reduced to \$1,450 due to a lack of access to the laundry room. The rental unit is a basement suite of a single-detached house. The upper level is rented out to four young men, all of whom are related (the "**Upper Tenants**").

#### **1. Prior Application**

The parties have appeared before an arbitrator prior to this application. On February 3, 2020, the parties attended a hearing on an application of the tenant for substantially the same relief concerned disturbances alleged to have occurred in October, November, and December 2019.

On February 11, 2020, the presiding arbitrator issued a written decision (the "**February Decision**"). The presiding arbitrator excluded all videos files served by the tenant on the landlord from evidence for reasons of insufficient service.

In the February Decision, the presiding arbitrator wrote:

I am satisfied that there has been a breach of the Act and that the Tenant has suffered from a loss of quiet enjoyment [due to noise caused by the Upper Tenants], I am satisfied that the Tenant should be compensated accordingly.

[...]

The Landlord is Ordered to take corrective action immediately to investigate the nature of the Tenant's claims for loss of quiet enjoyment and to provide an effective remedy to this situation. In addition, I grant the Tenant a Monetary

Order in the amount of \$1,500.00, and the Tenant is permitted to withhold this amount from a future month's rent.

## 2. Tenant's Claim

The tenant's claim against the landlord is relatively straightforward. She alleges that the actions of the Upper Tenants from January to May 2020 have deprived her of the quiet enjoyment of the rental unit that she is entitled to. She testified that the deprivation of quiet enjoyment has caused her anxiety and depression. She submitted a doctor's note corroborating this. She testified that the landlord was aware of this and did nothing to prevent or hinder the Upper Tenants' conduct.

The tenant seeks the full reimbursement of rent as follows:

January	\$1,450	Application 803
February	\$1,450	Application 803
March	\$0	-
April	\$1,400	Application 551
May	\$950	Application 551
<b>Total</b>	<b>\$5,250</b>	

I understand that, as directed in the February Decision, the tenant deducted the \$1,500 from March and April 2020's rent (\$1,450 and \$50 respectively). I am unsure why the tenant has only paid \$950 in rent for May 2020.

The tenant testified that the Upper Tenants cause very loud noises on an almost daily basis that could be heard in the rental unit. She testified that the Upper Tenants play loud music at all hours of the day, cause unreasonably loud noise constantly, host loud parties, and smoke cigarettes and marijuana on the residential property, which wafted into the rental unit. She has called the police on the Upper Tenants on numerous occasions. She characterized living below the Upper Tenants as a "living nightmare".

The tenant testified that following the February Decision, the landlord did not make any significant investigations as ordered, and that there was no change to the noise coming caused by the Upper Tenants.

The tenant submitted numerous letters she sent to the landlord in which she listed the disturbances caused by the Upper Tenants during January to May 2020. I will not list all of alleged disturbances, as they are numerous, but during this period of time, the tenant sent at least 13 letters alleging disturbances on 124 different days (there are 151 days total in those five months).

The time and nature of the disturbance varies, some are mid-day, other late in the evening or the middle of the night. The tenant frequently refers to noises as "loud",

“banging”, or sounding like “furniture being dragged”. On three occasions a letter dated February 18, 2020, she described the noise as “like an earthquake”.

The tenant also alleges in these letters that her son can smell marijuana smoke in the rental unit. She wrote that her son has “a very serious health issue for a second-hand smoke” [sic] on more than one occasion. At the hearing, the tenant did not explain what this issue was, or provide any documentary evidence supporting this claim.

The tenant called a witness (“AA”) to corroborate her testimony and the contents of these letters. AA testified that he lived in the rental unit with the tenant. The landlord testified that she did not know who AA was, and that she had not agreed that he could reside in the rental unit.

AA confirmed that the Upper Tenants regularly caused significant noise as alleged by the tenant. He testified that one of the Upper Tenants physically assaulted him, and that he filed a police report. No copy of that police report, or indeed any police report relating to the conduct of the Upper Tenants, was submitted into evidence.

Among the letters that the tenant delivered to the landlord was a statement from a neighbor of the tenant, dated April 23, 2020, in which he alleged that, in the Spring of 2019, the landlord “made extensive renovations inside” the residential property to convert it into an “illegal” 10 room AirBnB. The neighbor confirmed that the Upper Tenants moved into upper unit in the Fall of 2019 but stated that “there are many people living” in the upper unit and that he suspects “that they are renting out some of the former Airbnb suites which were never torn down”.

The neighbor wrote that the Upper Tenants “were occasionally noisy during the colder months and I asked the, to be quiet a number of times but felt it wasn’t serious enough to call alert the Police. They are now so bad that I have called the RCMP recently and endure a lot of stress from the constant source of annoyance from excessive noise at any hour of the day or night, as well as rudeness and utter disrespect shown towards me.”

The neighbor was not called to give testimony at this hearing.

### 3. Landlord’s Position

The landlord denied that she has failed to investigate the noise complaints of the tenant. She testified that she travelled from Vancouver Island (where she lives) to the mainland to inspect the Upper Unit in October 2019 and February 2020. She found no signs of extensive partying.

The landlord submitted photographs taken after the February Decision was issued which show that the Upper Tenants installed fabric pads on the legs of their furniture, to

reduce the noise they cause, and that they have sealed the seams the door connecting the rental unit to upper unit using clear packing tape.

The landlord also provided a letter from the "Property Use Coordinator" of the municipality in which the rental unit is located dated June 4, 2020, which notified the landlord of an inspection of the residential property to ensure zoning bylaw compliance. This inspection was made in response to a complaint that the upper unit contains more than one family. No evidence was presented as to who lodged the complaint. The Property Use Coordinator wrote the landlord an email on June 11, 2020, stating:

Based on my site inspection there are four individuals residing in the main dwelling unit who are all related by blood, this constitutes one family.

The property is in compliance of the [municipality] Zoning Bylaw and therefore this complaint will be closed.

At the hearing, the landlord testified that she was unable to obtain copies of the police reports made after each of the tenant's complaints. She argued that she could not confirm the veracity of the tenant's claims, and the extent of the offensive conduct by the Upper Tenants, without corroboration from police reports. She testified that she filed a Personal Information Request pursuant to the Privacy Act with the RCMP on February 24, 2020 (she submitted a copy of this into evidence), but to date has not received the requested files. The landlord argued that it was the tenant's responsibility to furnish her with copies of these reports so she would know what corrective steps to take.

The landlord called one of the Upper Tenants ("JF") as a witness. JF denied that the Upper Tenants have acted as alleged by the tenant. He characterized the tenant as "manipulative" and said there was little truth to the allegations levied against the Upper Tenants. JF stated that the Upper Tenants all worked in construction and are often up early in the morning for work reasons.

JF admitted that, in January or February 2020, the Upper Tenants had "maybe 1 or 2 loud parties". He testified that such conduct stopped after the February Decision was issued. He testified that on a few occasions after the February Decision was issued the Upper Tenants have their girlfriends over for family dinners (eight people total).

JF admitted that the Upper Tenants may have caused noise by dragging chairs on the floor. After the February Decision, the Upper Tenants installed fabric pads on the bottoms of their chairs in an effort to dampen the sounds.

JF testified that one of the Upper Tenants used to play his music loudly at night sometimes, but that he has ceased such conduct. JF denied that any of the Upper Tenants smoked cigarettes or marijuana in the upper unit but said that they did sometimes smoke on the patio or outside on the residential property.

JF denied that any of the Upper Tenants assaulted AA. He testified that AA often harasses the Upper Tenants about the parking situation (neither party made extensive submissions on this issue, but I gather there is animosity regarding the tenants or the Upper Tenants blocking one another in with their cars, or making it difficult to access the door to the rental unit). He said on one such occasion, AA pulled out his phone, started filming the Upper Tenants, and yelled at them that the Upper Tenants assaulted him. JF testified that the police attended, but that no charges were pressed.

I was not referred to any video file depicting the alleged assault, and one was not among the video files uploaded in support of application 551.

The landlord argued that she investigated the tenant's noise complaints, spoke with the Upper Tenants about these complaints, and that they took steps to minimize the noise they caused. She argued that she could not establish the truth of the tenant's allegation due to the tenant not providing her with copies of the police reports made following their visits to the residential property. She argued that the failure to provide her with these copies amounts to a failure of the tenant to mitigate her damages.

#### Application 551 Video Files

As stated above, I have reviewed all video files uploaded by the tenant in support of application 551 (71 total). The vast majority of the videos are recorded in the rental unit, and as such, do not depict any conduct of the Upper Units; they record only the sound coming from the upper unit as heard in the rental unit.

The tenant provided a five-page digital summary list (the "**List**") setting out all the files uploaded and included a brief description of each video. The List also set out the dates and times the videos were purported to be taken, but there is nothing in the videos themselves which corroborate the dates or times. The List indicates that videos were taken between April 1 and May 31, 2020.

I must also note that the Lists contains descriptions of 76 videos, however, 17 of the videos do not appear to have been provided to the RTB (all those files listed on page 4 of the List). Additionally, other video files not on the List have been provided to the RTB in support of application 551. I have only considered those files that were actually uploaded.

Of the 71 files uploaded, only 15 contained recordings that matched the descriptions on the List. The most common discrepancy between the video files and the List is the severity of the noise. The tenant appears to have characterized any audible noise as "loud". The majority of the "loud" noise described on the List sound faint on the recordings. Some are not audible at all. In one instance (video 22) the "loud music with bass" described on the List is actually quieter than the running water heard in the background. Other descriptions of noises on the List are only *partially* true (you may be

able to furniture being dragged, for example, but not screaming, as claimed in the description for video 2).

The tenant also mis-identifies noises on the List. For example, at video 12, she describes “loud clacking noises”. Upon review of the video itself, these noises are discovered to be normal footsteps. The List describes video 21 as containing “loud clacking and screaming noises”, but the video contains normal-sounding footsteps and faint murmuring (perhaps from a television).

The contents of the video that substantially matched their descriptions on the List are as follows:

File Name	Date	Time	Description (on the List)
Video 4	04-Apr-20	5:10 AM	Loud music being played above my bedroom
Video 6	07-Apr-20	12:30 AM	Furniture being dragged and loud banging noises above my bedroom
Video 15	17-Apr-20	9:45 PM	Party noises above my bedroom with barbequing outside backyard porch, this is where the assault happened and police was called in
Video 16(1)	18-Apr-20	11:30 PM	Loud noises above my bedroom
Video 17	21-Apr-20	1:05 AM	Loud noises above my bedroom and partying/continuously smoking outside the back yard
Video 17(1)	21-Apr-20	9:03 AM	Loud noises above my bedroom and partying/continuously smoking outside the back yard
Video 20	25-Apr-20	11:30 PM	Loud party noises and music playing with bass on, above our bedrooms
Video 28(1)	03-May-20	2:30 PM	Furniture being dragged every 10-15 minutes for 4 hours
Video 30	05-May-20	12:34 AM	Loud disturbing noises above my bedroom
Video 31	06-May-20	6:10 AM	Loud noises and banging sounds above our bedroom
Video 32	07-May-20	5:00 AM	Loud noises and hammering sounds above my bedroom
Video 33	07-May-20	6:23 AM	Loud noises and jumping sounds above my bedroom
Video 34	10-May-20	6:55 AM	Sound of vacuum being used
Video 37	13-May-20	2:03 AM	Loud party noises sound like from outside from upstairs tenant
Video 39	15-May-20	5:00 AM	Loud noises and banging noises above my bedroom

Videos 15, 16(1), 17, 17(1), 20, and 37 all appear to record the sounds of social gatherings (I cannot say if they are “parties” *per se*, or perhaps larger family dinners; both male and female voices). Boisterous calls and exclamations can be heard in the recordings. There are no indications of physical assaults, however an argument can be heard in video 37.



I cannot say the frequency of furniture being dragged in video 28(1) (the video itself is less than a 30 seconds), but it does capture the prominent sound of furniture being dragged along the floor.

Videos 31 to 33 record noise such as doors cupboards opening and closing, knuckles knocking on doors, and talking that are all common in the course of an ordinary morning routine of a several people. The volume of these noises is prominent.

At the hearing, the tenant referred to the following videos from application 803:

- 1) video 4715, described on the list for that application (the “**803 List**”) as “loud/disturbing music” but which prominently capture the sound of running water (perhaps a running toilet) and a faint bass thump.
- 2) Videos 46 to 47 (including all “sub-videos”, 25 total), which were not described on the 803 List. The bulk of these videos capture only ordinary noises to be expected when living in a basement unit (footfalls, brief sounds of furniture being dragged). However, video 46(6) captures boisterous singing and music coming from the upper unit and video 47(1) captures what can only be described as a very loud house party, where attendees are yelling, stomping, jumping. I do not know when either of these videos was made. Additionally, video 47 captures the loud sound of a heavy object being dropped on the floor of the upper unit.

The landlord referred only to videos uploaded in support of application 551. She argued that the videos did not depict any objectionable sounds.

## **Analysis**

Residential Tenancy Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

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. In order 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 “**Four-Part Test**”)

Section 28 of the Act states:

**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:

[...]

(b) freedom from unreasonable disturbance;

Rule of Procedure 6.6 states:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application.

So, the tenant bears the onus to prove that it is more likely than not that:

- 1) the landlord breached the Act by failing to provide her with the quiet enjoyment she is entitled to;
- 2) she suffered a quantifiable loss as a result of this breach; and
- 3) she acted reasonably to minimize this loss.

1. Did the Landlord Breach the Act?

Residential Tenancy Policy Guideline 6 discusses a tenant's right to quiet enjoyment. It 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 RTA [...]. 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.

I must first note that the Act does not stand for the proposition that a tenant is deprived of quiet enjoyment by *any* disturbance; rather it stands for the proposition that an *unreasonable* disturbance will cause such a deprivation. What makes a disturbance reasonable or unreasonable is often a point of contention at hearings. This case is no different. As a general rule, everyday noises such as footsteps, conversations, running water, music, and television are not unreasonable disturbances. They are sounds that should be reasonably expected by an occupant of a basement unit. Some of these sounds may become unreasonable disturbances depending on the time of day (such as music, conversations, or television), but others will not (such as running water or normal footsteps).

#### **a. Neighbor's Letter**

The tenant's neighbor was not called to give evidence at the hearing. The landlord did not have an opportunity to cross-examine him. Additionally, in his letter, the neighbor stated "many people" live in the upper unit and that he suspected that the upper unit was being rented out on AirBnB. Such allegations are not borne out by the Property Use Coordinator's email dated June 11, 2020, in which he found that "there are four individuals residing" in the rental unit and that the use of the residential property complied with zoning bylaws.

I find that contents of the neighbor's letter to be unreliable. As such, and as the landlord did not have an opportunity to cross-examine him to test his evidence, I assign no evidentiary weight to the neighbor's letter.

#### **b. Smoke**

The tenant provided no documentary evidence which supported her allegation that the Upper Tenants were smoking in the upper unit and that the smoke was entering the rental unit.

As such, I find that she has failed to discharge her evidentiary burden to prove that the landlord breached the Act by not preventing the Upper Tenants from allowing smoke to enter the rental unit.

c. Noise

Most of the noises captured in the videos I have reviewed were reasonable noises. I do not dispute that they may have disturbed the tenant. However, I find that the disturbances were not unreasonable. When living in a basement unit, a tenant must expect and accept a certain amount of sound emanating from the unit above.

However, based on my review of the video evidence provided by the tenant, I find that the Upper Tenants have caused unreasonable disturbances which have deprived the tenant of her quiet enjoyment of the rental unit.

As stated above, I find that the bulk of the descriptions of the videos on the List are inaccurate. However, of those that are accurate, most contain instances of unreasonable disturbances. Videos 46(6) and 47(1) of application 803 also capture unreasonable disturbances caused by the Upper Tenant.

It is not solely the type of noise caused that causes a disturbance to be an unreasonable one. It is also the time the noise is caused, and the duration of the noise. For example, the noises recorded in videos 31, 32, 33, and 34 of application 551 unreasonably disturb the tenant not due to their nature (vacuuming, conversations at a moderate volume, and noises typical of a morning routine) but rather due to the time they were made.

I accept that the Upper Tenants must be at work early. This does not mean that they are entitled to create the noise that they do, which otherwise might be reasonable later in the day. Vacuuming at noon is reasonable. Vacuuming at 6:55 am is not. The Upper Tenants must recognize that the tenant is not on the same schedule as them and must take care not to create an undue amount of noise during their morning routine.

For similar reasons, the music that can be heard in some of the recordings at mid-day is not an unreasonable disturbance, but if it was played at 2:00 am, it would be.

It is not necessary for me to determine if the Upper Tenants were hosting large parties after the February Decision was issued, or only eight-person family dinners. The Upper Tenants are entitled to host either of these types of events, provided that the event does not unreasonably disturb the tenant.

The events captured in application 803's videos 46(6) and 47(1) are examples of unreasonable disturbances at any time of day.

The events captured in application 551 videos 15, 16(1), 17, 17(1), 20, and 37 are examples of unreasonable disturbances due to the time of day they occurred. Had they occurred earlier in the evening, they would not likely have been considered to have been unreasonable.

I find that, in the 13 letters sent between January and May 2020, the tenant made the landlord aware of the incidents which I have found unreasonably disturbed her. However, it is not enough that the landlord was made aware of these events. The tenant must also prove that the landlord failed to act reasonably to address them.

For the reasons set out below, I find that the actions of the tenant made it difficult for the landlord to reasonably address and remedy the unreasonable disturbances.

## 2. Did the Tenant Minimize her Loss?

Before addressing the second and third step of the Four-Part Test, I should first address the fourth step: did the tenant act reasonably to minimize her loss?

As stated above, I find that the tenant mischaracterized the nature of all but 15 of 71 video files on the List. The 13 letters sent by the tenant to the landlord, in which the tenant alleged disturbances on 124 of the 151 days between January 1 and May 30, 2020, used language similar to that used on the List. I find it more likely than not that, as she did with the descriptions on the List, the tenant exaggerated the extent of the disturbances in these letters.

Such exaggerations would have made it difficult for the landlord to properly address the tenant's complaints and determine the truth of the matter. I accept the landlord's testimony that she spoke with the Upper Tenants about the disturbances and they denied causing them as alleged by the tenant.

I find that, by failing to clearly articulate the noises she heard and by failing to exercise reasonable judgment as to which of these noises were unreasonable disturbances, the tenant obscured those disturbances which were legitimately unreasonable. This made it difficult for the landlord to address the tenant's legitimate complaints.

Under such circumstances, it was not unreasonable for the landlord to want copies of the police reports referred to by the tenant to corroborate her numerous allegations. These reports are not easily obtained by the landlord, but should be readily obtainable by the tenant, given that she was filed the complaints.

Had the tenant restricted her notifications to the landlord of disturbances that were unreasonable (for example, the social gatherings or parties late at night, or the

vacuuming and loud conduct early in the morning) and provided corroboration (one or two video files, for example), the landlord would likely have been able to address the tenant's concerns in a satisfactory manner. Instead, the tenant opted to list every noise she heard in both vague and exaggerated terms (describing normal footsteps as "loud noises" for example). This is not reasonable. I find that, faced with such a number of exaggerated claims of unreasonable disturbances, any reasonable landlord would have difficulty establishing the truth of the complaints and would be unable to proceed in a manner satisfactory to a tenant.

As such, I find that the tenant has failed to prove that she acted reasonably to minimize her loss. I find her practice of reporting all noises caused by the Upper Tenants as unreasonable disturbance to be unreasonable and to have hindered the ability of the landlord to properly investigate and address the tenant's legitimate complaints.

Accordingly, I find that the tenant is not entitled to any compensation due to being unreasonably disturbed by the Upper Tenants. This portion of the tenant's applications are dismissed.

### 3. An order that the landlord comply with the Act

I should first note that parties are always expected to comply with the Act, even absent an order from an arbitrator. Section 28 of the Act creates an ongoing obligation that a landlord ensure that a tenant has quiet enjoyment of the rent unit, free from unreasonable disturbances.

At the hearing, the landlord expressed difficulty in determining how the tenant was being unreasonably disturbed, as she was not certain of the truth of the tenant's complaints. She testified that she spoke with the Upper Tenants, and that they took some steps to address the complaints (sealing the door and putting fabric pads on the feet of the furniture). She stated that without the police reports she could not be certain as to the truth of the tenant's allegations.

In this decision, I have outlined which of the disturbances alleged in application 503 are unreasonable. The landlord may rely on these determinations when considering what steps to take to ensure that the tenant receives the quiet enjoyment of the rental unit that she is entitled to. As the Upper Tenants are not parties to this proceeding, I cannot order that they take any specific action.

However, I order the landlord to notify the Upper Tenants, in writing, of the conduct which I have determined to constitute unreasonable disturbances and to demand that they cease such conduct. The landlord should advise the Upper Tenants that a failure to do so may be grounds to terminate their tenancy.

## **Conclusion**

I dismiss the tenant's applications for monetary orders, without leave to reapply.

Pursuant to section 62 of the Act, I order that the landlord ensure that the tenant receives the quiet enjoyment of the rental unit to which she is entitled, and that, as stated above:

- 1) notify the Upper Tenants, in writing, of the conduct which I have determined to constitute unreasonable disturbances;
- 2) demand that they cease such conduct; and
- 3) advise the Upper Tenants that a failure to do so may be grounds to terminate their tenancy.

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: July 31, 2020

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Residential Tenancy Branch