



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Capreit Limited Partners and [tenant  
name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC and FFT

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

At the hearing, the tenant applied to amend her application to include an application for a monetary award for damages or compensation pursuant to section 67 of the Act. The landlord consented. Accordingly, the tenant's application is amended as requested.

### Issue(s) to be Decided

Is the tenant entitled to the following:

- An order requiring the landlord to comply with the Act pursuant to section 62;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement pursuant to section 67 of the *Act*;

- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

### Background and Evidence

The parties agreed the tenancy began on October 1, 2019 for monthly rent of \$1,350.00 payable on the first of the month. The tenant provided a security deposit of \$675.00. The tenant submitted a copy of the signed tenancy agreement.

The tenant applied for compensation for loss of quiet enjoyment and reimbursement of expenses for the period of 8.5 months from November 2019 to July 31, 2020. The tenant requested reimbursement of all rent paid for 8.5 months. The tenant submitted an Amendment requesting \$850.00 each month for 8.5 months specifically related to the loss of use of the balcony.

The parties agreed the tenant incurred inconvenience and loss as a result of two water leaks from the overhead apartment (in November 2019 and January 2020). The tenant testified the same overhead occupant during the same period disposed of water from a fish tank from his deck periodically which poured onto the unit's deck. The tenant claimed inability to use the deck for 8.5 months from the unexpected but anticipated leakage and disposal of water.

The tenant submitted copies of correspondence to the landlord, one letter stating in part:

I moved in October 2019. Ever since I moved in I have had issues with the tenant above me, twice my apartment had water flowing from the ceiling from his fish tank damaging my furniture. I was told by the office, it was my problem and I had to deal with it. I cannot use my balcony because of the tenant continuing throw buckets of water onto my balcony, I have complained, nothing done, told if I had a video of it maybe!!!

Sunday I decided to sit out, it was such a beautiful day, then the buckets of water poured down on me, my cushion and furniture. This is not acceptable!!!, when I complained to him, he started opening and closing his sliding door with great force, shaking my apartment.

I am in an apartment where I am terrified each day, waiting for something new to happen. I deserve to life comfortably with out fearing for my safety.

I need you to move me to another building, I cannot take this any more!!

The tenant testified as follows:

1. The water leaks damaged a sofa and dining room table; supporting photos were submitted;
2. The tenant became increasingly afraid of the occupant of the overhead unit which was the source of the water and described his behaviours which she interpreted as threatening;
3. The tenant submitted supporting photos and videos showing water splashing onto her balcony sliding doors and deck and pooling on the surface;
4. The tenant could not use her balcony as she never knew when the overhead tenant would dispose of water which would flow or splash onto the balcony.

This is the second RTB arbitration with respect to this matter. In the first application, the tenant brought an application under section 62(3) requesting an Order that the landlord comply with the Act. Following a hearing, the Arbitrator submitted a Decision dated July 8, 2020, a copy of which was filed as evidence in this proceeding.

In the previous Decision, the Arbitrator granted the Order as requested by the tenant. The key findings are as follows:

1. The tenant provided the landlord with several notices of the interference by the occupant of the overhead apartment with her enjoyment of the unit, the leaking, the water disposal affecting her balcony, and the occupant's behaviour which she found aggressive and frightening.
2. The landlord had received many notices of the breaches, "both verbally and in writing", and had "given the landlord ample opportunity to correct it."
3. ... "[T]he Landlord has breached section 28 of the *Act* by failing to protect the Tenant from unreasonable disturbance, I therefore find that the Tenant has sufficient grounds to end the tenancy for a breach of material term, should they wish to do so."
4. The Arbitrator stated in part as follows:

"I order the Landlord to take immediate, reasonable, and substantive steps to protect the Tenant's right to quiet enjoyment, such as ending the upstairs tenant's tenancy, moving the Tenant to a suitable and substantially similar rental unit in the building with the same or cheaper rent, if available and agreeable to the Tenant, or taking other reasonable steps to protect the Tenant's rights under section 28 of the *Act*, as appropriate."

Following the decision, the landlord sent a letter to the occupant in the overhead apartment dated July 15, 2020, a copy of which was submitted, directing them to either remove the fish tank or move to a ground floor unit.

The tenant requested reimbursement of rent for 8.5 months, compensation for loss of use of her balcony, moving costs, and compensation for damage to the sofa and table.

The landlord agreed the tenant was entitled to some compensation but not to the extent claimed.

### Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the submissions and arguments during a lengthy hearing are reproduced here. The relevant and important aspects of the claims and my findings are set out below. The version of events and the opinions regarding the landlord's obligations were contradictory in many respects.

#### *Burden of Proof and Applicable Sections of Act and RTB Guidelines*

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.

Section 22 of the *Act* deals with the tenant's right to quiet enjoyment. The section states as follows:

*22. 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]

I have considered *The Residential Tenancy Policy Guideline # 6 - Entitlement to Quiet Enjoyment* which states as follows:

*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 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 and section 60 of the MHPTA (see Policy Guideline 16).*

*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.*

*[emphasis added]*

Section 67 states:

**Director's orders: compensation for damage or loss**

**67** Without limiting the general authority in section 62 (3) *[director's authority respecting dispute resolution proceedings]*, if damage or loss results from a party

not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The claimant bears the burden of proof to provide sufficient evidence to establish on a balance of probabilities **all** of the following four points:

1. The existence of the damage or loss;
2. The damage or loss resulted directly from a violation – by the other party – of the Act, regulations, or tenancy agreement;
3. The actual monetary amount or value of the damage or loss; and
4. The claimant has done what is reasonable to mitigate or minimize the amount of the loss or damage claimed, pursuant to section 7(2) of the Act.

### *Credibility and Weight of Evidence*

I found the tenant's evidence forthright, credible and articulate. I give considerable weight to her testimony which was supported in all material respects by the documentary evidence, particularly the video file showing water from overhead splashing onto the unit's balcony, and the correspondence to the landlord describing her subjective experience of distress and frustration. The tenant clearly and effectively described the negative impact on her of the 8.5-month period of two incidents of leaking which damaged furniture, the water splashing on her balcony, and her fear of the overhead occupant.

In listening to the testimony and reviewing the documentary evidence including correspondence between the parties, I find that I concur with the tenant's assessment that the landlord appeared indifferent and unresponsive to their complaints.

### *Conclusions*

The tenant was entitled to freedom from unreasonable disturbances. *A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected.* I find the landlord failed to meet their obligation in this regard.

I accept the tenant's testimony and evidence that the interference was substantial as well as frequent and ongoing.

I find the landlord was aware of unreasonable disturbances through the water leaking

and splashing from the overhead unit through multiple complaints from the tenant but failed to take reasonable steps to correct the situation or to compensate the tenant. I find the landlord did not meet their obligation under the Act.

I accept the tenant's testimony supported by documentary evidence that the situation was serious and had a profound effect on her ability to enjoy the unit. I find that the tenant was significantly and increasingly unable to use the unit as expected.

I find the loss of quiet enjoyment extended for a period of 8.5 months as claimed by the tenant. I find the tenant lost certainty about when she could safely use her balcony. While the water did not leak into the unit or splash onto the deck continuously for the 8.5-month period, I find the tenant experienced discomfort, fear, uncertainty and distress about the repetitive events evenly over this period. I accordingly find the period of loss of quiet enjoyment extended for 8.5 months.

In consideration of the quantum of damages, I refer again to the *Residential Tenancy Policy Guideline # 6* which states:

*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 find the tenant was able to live in the unit during this 8.5 month period but was significantly deprived of their right to live peacefully by the landlord's failure to act or to respond adequately. I find that, while the source and extent of the disturbances varied from time to time, the tenant was consistently denied full quiet enjoyment for this period.

I have considered the history of this matter, the parties' testimony and evidence, the Act and the Guidelines. I find the tenants have met the burden of proof on a balance of probabilities for a claim for loss of quiet enjoyment for 8.5 months. I find the actions and failure to act of the landlord amounted to serious failure to protect the tenants' quiet enjoyment.

I accept the findings of the Arbitrator in the previous Decision. As the application for an Order that the landlord comply with the section 62 of the Act was already dealt with in that Decision, I dismiss the same claim in this hearing without leave to apply.

In view of the circumstances, I find it is reasonable that the tenant receive compensation in the amount of 50% of the rent paid for this period which I find is \$5,737.50.

The tenant has claimed compensation for water damage to a sofa and a dining room table and submitted descriptive photographs. I accept the tenant's claims that the leaking water caused the damage, the landlord was in breach of their obligation to provide quiet enjoyment to the tenant, and the landlord is required to compensate the tenant. In the absence of documentary evidence of the refinishing, repair, or cleaning costs with respect to each item, I find this is an appropriate situation for an award of nominal damages which I set as \$500.00 per item, for a total of \$1,000.00.

The tenant is also entitled to reimbursement of the filing fee of \$100.00.

In summary, I award the tenant a Monetary Order calculated as follows:

ITEM	AMOUNT
Loss of quiet enjoyment	\$5,737.50
Compensation for damage to sofa and table	\$1,000.00
Reimbursement of filing fee	\$100.00
<b>TOTAL MONETARY ORDER</b>	<b>\$6,837.50</b>

### Conclusion

I grant a Monetary Order to the tenant in the amount of **\$6,837.50**. This Monetary Order must be served on the landlord. This Monetary Order may be filed and enforced in the Courts of the Province of British Columbia.

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: September 17, 2020

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Residential Tenancy Branch