



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC

### Introduction

On August 4, 2020, the Tenant made an Application for Dispute Resolution seeking an Order for the Landlord to comply pursuant to Section 62 of the *Residential Tenancy Act* (the “Act”).

Both the Tenant and the Landlord attended the hearing. All parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by registered mail on August 15, 2020; however, he did not check to see if the Landlord could view his digital evidence prior to serving it, in accordance with Rule 3.10.5 of the Rules of Procedure. The Landlord confirmed that he received this package, but he did not know how to access the digital evidence. Based on this undisputed testimony, I am satisfied that the Landlord was served with the Notice of Hearing and evidence package. However, as the Tenant did not comply with Rule 3.10.5 regarding his digital evidence, I have excluded this and will not consider it when rendering this Decision. I have accepted the Tenant’s other evidence and will consider it when rendering this Decision.

The Landlord advised that he did not submit any evidence for consideration on this file.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Tenant entitled to an Order that the Landlord comply with the *Act*?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2020, that rent was established in the amount of \$1,975.00 per month, and that it was due on the first day of each month. A security deposit of \$950.00 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Tenant advised that on or around March 2020, the tenant that lives below him put food scraps in the garden, which attracted various animals onto the property. He asked this tenant to refrain from doing so and she screamed at him. The Landlord was out of town at this time; however, when he returned, the Tenant informed the Landlord of this incident. After being warned of this issue by the Landlord, the downstairs tenant removed this food from the property approximately a month later. It was around this point that the downstairs tenant began to pick fights with the Tenant and verbally attack him and his family. The downstairs tenant would call him names, would use vulgar language, and would shout inappropriate and unacceptable racial epithets at the Tenant and his family. These verbal attacks happen every time the downstairs tenant sees the Tenant or his family.

He testified that she also started making noises on her ceiling, similar to a broom being banged loud enough on the ceiling to wake up and startle the Tenant and his family. This would occur multiple times per day, almost every day of the week, and would sometimes start as early as 5:00 AM. She would also make noises that sounded like the walls were being scratched. As a result of these noises, the Tenant and his family have not been slept in the bedroom for the last six weeks.

The Tenant advised that they would do their laundry on their designated days in the shared laundry facility, but they could hear the downstairs tenant go into the laundry room even though it was not her day to do so. Approximately three weeks ago, after hearing the downstairs tenant go into the laundry room, they discovered a substance that they suspect to be saffron powder in their laundry and around the laundry facility.

He also advised that on one recent occasion in July 2020, his wife and child were laying in the front yard and the downstairs tenant came outside and started assaulting his wife and child by throwing cooking salt on them. His wife started filming this incident; however, the downstairs tenant attempted to knock the camera out of his wife's hands. The downstairs tenant actually knocked off his wife's hijab. The police were called about this incident and when they arrived, the downstairs tenant apologized for her behaviour. The police asked the Tenant's wife if she would like to press charges against the downstairs tenant, but she declined to do so.

He advised that he has tried multiple times to attempt to sit down and discuss these issues with the Landlord and the downstairs tenant; however, she has refused to do so. He stated that that Landlord has another, separate tenant downstairs who is also having issues with this problematic lady downstairs, and this other tenant has already brought up their concerns with the Landlord.

The Landlord acknowledged that what the Tenant has testified to is correct and accurate. He stated that he did not take any action because of the COVID pandemic, but he issued a letter to the tenants in July 2020 advising them to sort out their differences. However, there was no improvement in the relations between the parties. He advised that he has investigated the complaints, that he has determined that the downstairs tenant is at fault, and that he will be serving this tenant with a notice to end her tenancy.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 28 of the *Act* outlines the Tenant's right to quiet enjoyment and states that the Tenant is entitled to reasonable privacy and freedom from unreasonable disturbance.

Furthermore, Policy Guideline # 6 explains the covenant of quiet enjoyment and that "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."

Section 62 of the *Act* states that the Director has the authority to make any finding of fact or law that is necessary or incidental to making a Decision or an Order under this *Act* and that 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*.

Given that the Landlord confirms the Tenant's complaints about unreasonable disturbances from the downstairs tenant, her unacceptable, tactless, and vulgar commentary, and the incident involving physical assault, amongst many other inappropriate interactions, I am satisfied that the downstairs tenant has engaged in actions and behaviours that have breached the *Act* and have jeopardized her tenancy.

While I acknowledge that the pandemic has made it more difficult to manage problems during a tenancy, the consistent evidence is that the Tenant has brought these issues to the Landlord's attention as far back as March 2020, and the Landlord has done very

little to investigate or address these complaints. As such, I Order that the Landlord take immediate action to investigate the deteriorating relationship between his tenants and to take the necessary steps to correct the situation as soon as possible. Should the Landlord not act to address this issue in a timely manner, the Tenant may apply for monetary compensation against the Landlord for his loss.

Given that these issues have been ongoing for such a long time, that the Landlord has been aware of these problems since March 2020, and that the Landlord has done very little to address or rectify these hostile interactions, the Tenant may also believe he is entitled to monetary compensation for any loss suffered to date.

### Conclusion

I Order the Landlord to take the necessary corrective action to rectify the undisputed breaches of the *Act* and to restore order in this property. The Landlord must do so immediately. Should he not comply with this Decision, the Tenant is at liberty to apply for monetary compensation against the Landlord.

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 11, 2020

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Residential Tenancy Branch