



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SAH PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, RR, FFT

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package and 32 of the documentary evidence files via Canada Post Registered Mail on January 8, 2021. Both parties also confirmed the service of the remaining documentary evidence files. The landlord's agent (the landlord) confirmed that no documentary evidence was submitted by the landlord. Neither party raised any service issues. I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, the tenant's application was clarified. Despite the tenant selecting a request for the landlord to comply with the Act, Regulations or Tenancy Agreement, the tenant has also selected a request to reduce rent for repairs, services or facilities agreed upon but not provided. The tenant stated that she now only wishes to proceed on the monetary request for compensation under the request to reduce rent for the loss of quiet enjoyment and the recovery of the filing fee. The tenant stated that as of the date of the hearing the tenant was in the process completely vacating the rental unit.

The tenant withdraws her request for an order for the landlord to comply. The landlord confirmed his understanding and made no objections.

The hearing shall proceed on the tenant's monetary claim of \$7,405.20 for the loss of quiet enjoyment and recovery of the filing fee.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for the loss of quiet enjoyment and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on August 1, 2018 on a fixed term tenancy ending on July 31, 2019 and then thereafter on another fixed term or month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 29, 2018. The monthly rent was \$1,300.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$650.00 was paid.

The tenant seeks \$7, 405.20 as compensation for the loss of quiet enjoyment for a 17 month period at \$435.60 per month (33% of monthly rent) for the period November 2019 to January 2021. The tenant stated that he suffers the loss of quiet enjoyment during the normal daylight hours while construction takes place and that the evening and overnight hours are without issue. The tenant stated that the daylight hours are when he normally sleeps as he works at night.

The tenant stated that since November 2019 the tenant has suffered an "extreme lack of quiet enjoyment" due to construction in the tenant's portion of the rental building. The tenant reported that the work being conducted is the "jackhammering of outer brick wall adjacent to my living areas". The tenant stated the landlord is replacing all the building windows and reinforcing fire escapes. The tenant stated that he works nights and is forced to remain in residence during the day due to the pandemic. The tenant stated that the repeated jack hammering noises are very disruptive during the day, every day while the landlords construction continues to replace all 64 windows of the building. The tenant has documentary evidence picture, "Scope of Work 1" which shows the exterior of the building in which each window to be replaced needs to have the

brickwork jack hammered out; a steel lintel inserted and the brick replaced and covered. The tenant has referenced a copy of a text message, "Screenshot\_20210104-153418\_Messages" which states in part a concern to the landlord over the noise from construction. The tenant also requests a discussion with the landlord regarding a discount on rent due to the construction. The tenant also refers to another copy of a text message, "Screenshot\_20210104-153228\_Messages" which states in part, regarding the landlord's notice on November 7, 2019 that scaffolding will be going up on the following week. The tenant also stated that he suffers from a lack of privacy due to the workers outside his window while at work.

The landlord stated that notice of construction was given to all tenants and that construction scaffolding was put up to begin construction sometime between the end of November to December 2019. The landlord stated that the current scaffolding in front of the tenant's unit went up in July 2020 and that there is ongoing work around the building. The landlord stated that work began in the fall of 2020 in front of the tenant's rental unit. The landlord confirmed in his direct testimony that the construction work is not cosmetic and is a major commitment by the landlord to maintain the property. The landlord stated that work began on a part-time basis at 3 days a week due to the pandemic and as of September 2020 became full time. The landlord stated that work begins between 8:30am to 9am each day. The landlord argued that the jack hammering is intermittent and not continuous all day as the workers use the jackhammer to remove and fit the windows.

### Analysis

Residential Tenancy Branch Policy Guideline #6, Entitlement of Quiet Enjoyment deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement.

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

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.

In this case, both parties have confirmed that the landlord is maintaining the property by upgrading the windows throughout the entire rental property. Both parties have confirmed that construction noise has occurred as a result of the "jack hammering" of the brick work to replace the windows of the entire building. I have no doubt that while the "jack hammering" is occurring that this would constitute an excessive noise that could be intrusive on the tenant. Despite the tenant's claims, the landlord has argued that the "jack hammering" is intermittent and not continuous all day as the work constitutes more than removing the old brickwork. The landlord has provided undisputed affirmed testimony that construction work begins between 8:30am to 9am each day. The tenant has stated that he works at night and because of the current pandemic is forced to shelter in place during the day while construction occurs. I find based upon the evidence that was presented before me that a loss of quiet enjoyment has occurred as a result of the landlord's diligent efforts in maintaining the property.

The tenant has stated that he seeks compensation equal to 1/3 of the monthly rent or 33% which is equal to \$435.60 per month for the period November 2019 to January 2021 totalling 17 months. The applicant provided no further details of how he came to this calculation other than he suffers his loss of quiet enjoyment during the construction hours during the day. The landlord has confirmed that "jack hammering" noises do take place but has argued that the tenant's claim of continuous noise to be inaccurate. The landlord has stated that the "jack hammering" is intermittent while work crews remove brick and install steel lintels before continuing. I find that the tenant has failed to establish a claim for the \$7,405.20 based upon his assertions that he has suffered a loss of quiet enjoyment of up to 33% for the rental unit. The tenant has not provided sufficient evidence to satisfy me that the construction work noise is continuous for the 1/3 time of construction. However, the tenant and landlord have provided sufficient evidence to satisfy me that there is at least the intermittent excessive noise caused by

the “jack hammering” for a limited amount of time each day. As such, I grant the tenant an arbitrary nominal award of \$2,500.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

### Conclusion

The tenant is granted a monetary order for \$2,600.00.

This order must be served upon the landlord. Should the landlord fail to comply with this order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 7, 2021

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Residential Tenancy Branch