



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing was held, via teleconference, on April 19, 2021. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- An order that the Landlord comply with the *Act*, regulations, and/or a tenancy agreement.

The Landlord and the Tenant both attended the hearing. All parties provided testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. The Landlord confirmed receipt of the Tenant's application and evidence. The Tenant confirmed receipt of the Landlord's evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Is the Tenant entitled to an order that the Landlord comply with the Act, or the Tenancy Agreement?

### Background and Evidence

The Tenant stated that he filed this application because the Tenants above him have a long history of making loud noises at all hours of the day. The Tenant stated that there are two units above him, in this rental complex, and they have each made loud and disruptive noises at various points through the night such that he has been woken up and startled.

The Tenant stated that his quiet enjoyment of the unit has been impacted due to losing sleep on multiple nights, and over such a long period of time. The Tenant stated that he had a hearing with the Landlord last summer regarding the noise issues, and following that hearing, the noise got a lot better. The Tenant stated that from July 2020, until December 2020, there were few, if any, noise issues. The Tenant stated that in December 2020, the thumping and banging on the floors above started to return. The Tenant stated that it was somewhat noisy from December 2020, until about 2 weeks before this hearing. The Tenant stated that it is now quiet again. The Tenant did not articulate when exactly he brought this to the attention of the Landlord, and exactly how often this noise occurs. The Tenant stated that some of his complaints on this matter to the Landlord has been informally, and in passing.

The Landlord stated that he is aware the Tenant has been unhappy with the noise, and he will continue to monitor, and follow up, when the Tenant complains to him. The Landlord stated that he has not noticed any noise issues when he has attended the unit.

The Landlord stated that this rental complex is a low-income rental complex with a 16-bed homeless shelter built in. The Landlord stated that many of the people living in this building live "alternative lifestyles" and have varying schedules. The Landlord stated that he takes all concerns seriously, and will continue to do his best to protect the Tenant's quiet enjoyment. The Landlord stated he has done all he can do at this point. More specifically, the Landlord stated that after he received a complaint from the Tenant early this year, he immediately issued a warning letter to each of the units directly above the Tenant. The Landlord warned the tenants above that complaints had been received, and to try to be mindful of others. The Landlord stated that he is often on-site, and starts his work day at around 3:00 am, and in an attempt to assess the noises, he routinely patrols and checks for noise issues. The Landlord stated that he has never heard any loud noises when he has walked by the Tenant's unit.

### Analysis

A party that makes an application against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

The Tenant did not directly state which part of the Act, the Tenancy Agreement, or the Regulations he wants the Landlord to comply with. However, I infer, based on his submissions, that he would like the Landlord to protect his quiet enjoyment of the rental unit.

I note the following portion of the Act:

Section 28 of the Act, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

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

*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.*

I have reviewed the Tenant's application and submissions. Although he feels his quiet enjoyment has been breached by the noises coming from the units above him, I find he has failed to sufficiently articulate the nature and extent of the noise issues above, such that I could be satisfied any of the noise issues equate to a substantial interference of his ordinary and lawful enjoyment of the rental unit. The Tenant did not have a detailed

or compelling explanation as to how often the noises occur, how long the noises last, when they occur, and how these noises cause him an unreasonable disturbance.

I reminded the Tenant in this hearing, that he has not filed an application for monetary compensation, for loss of quiet enjoyment, and this application was only to hear his request to have the Landlord comply with the Act.

Having reviewed the totality of the situation, I find the Tenant's complaints to the Landlord appear to be somewhat ambiguous, sporadic, and hard to follow. It does not appear the Tenant brought forward his issues with noise in a timely manner, or in a manner which enabled the Landlord to take steps right away to remedy the situation. Despite the sporadic, and often unclear complaints, the Landlord has issued warning letters to the Tenant's living above, and he has also attended the site on numerous occasions, throughout the night, to assess the issue. I find the Landlord's steps, given all of this, have been reasonable, and I decline to issue any further orders to the Landlord. There is insufficient evidence the Landlord is breaching any part of the Act, the Tenancy Agreement, or the regulations.

I dismiss the Tenant's application, in full, without leave.

I make no findings about whether or not the Tenant is entitled to monetary compensation for loss of quiet enjoyment, and the Tenant is at liberty to pursue this matter under a different application, should he choose to do so.

### Conclusion

The Tenant's application, is dismissed, without leave.

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 19, 2021

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Residential Tenancy Branch