



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Kenstone Properties Ltd and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **FFT, RR, RP, OLC**

### **Introduction**

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

- authorization to recover the filing fee for this application from the landlord pursuant to section 72;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

The landlord confirmed receipt of the tenant's application and materials. Based on their testimony I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

The tenant disputed receiving the landlord's evidence. The landlord testified that they served the tenant by mailing to the service address provided on the notice of dispute on May 10, 2021. While the tenant said that they had relocated since filing their application and the landlord ought to have been aware of the new address for service, I find that serving an applicant at the address explicitly provided in their Notice of Dispute Resolution as their address for service is in accordance with the *Act*, Rules of Procedure and the principles of procedural fairness. If the tenant had changed their

address for service it was incumbent on them to file an amendment to their application providing the new information. The tenant chose not to do so.

I accept the undisputed evidence of the landlord that they served the tenant with their materials by registered mail sent on May 10, 2021. Accordingly, I find the tenant deemed served with the landlord's evidence on May 15, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the *Act* and in any event sufficiently served pursuant to section 71.

### Issue(s) to be Decided

Is the tenant entitled to recover their filing fee from the landlord?

Is the tenant entitled to a reduction in rent for service or facilities not provided?

Should the landlord be ordered to make repairs to the rental unit?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

### 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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in 2013. The current monthly rent is \$1,550.00 payable on the first of each month. The rental unit is a residential suite on the upper floor of a mixed-use building with commercial units below. The air conditioning units for the building are located on the rooftop above the rental unit.

The tenant submits that the air conditioning system is making constant, loud unbearable noise and requires repairs or maintenance. The tenant testified that the system malfunctioned previously in 2016 and repairs were made at that time. The tenant says that the current noise issue began in December 2020 and the landlord has not taken adequate measures to address the issue. The tenant submitted into evidence copies of correspondence between the parties wherein the tenant alerts the landlord to the noise issue on January 2, 2021 and the subsequent discussions about appropriate measures. The tenant also submitted some audio recordings they say demonstrate the level of noise that is heard inside the rental unit.

The tenant suggests that the level and constancy of the noise has led to a significant disruption in their right to quiet enjoyment and ability to sleep or rest. The tenant submits that some roommates have chosen to vacate the rental unit due to the noise and they have incurred financial losses as a result. The tenant suggests that a \$900.00 retroactive rent reduction for the duration that the air conditioning unit has been causing the excess noise is appropriate.

The landlord submits that when alerted to the noise issue by the tenant they have taken reasonable measures including hiring a technician to attend and inspect the units on January 4, 2021, authorizing some repairs and replacement of parts and confirming the subsequent normal operation of the air conditioning units. The landlord testified that they have been informed by the third-party agents that the air conditioning units are operating normally and that some sound and vibration are to be expected. The landlord submits that they have taken reasonable steps in response to the tenant's complaints, have made necessary repairs in a reasonable timeframe and believe, based on the report from the third-party technicians, that no further issues are present.

### Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the Residential Tenancy Act speaks to a tenant's right to quiet enjoyment, and provides as follows:

**28** 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.

I find insufficient evidence in support of the portion of the tenant's application seeking a rent reduction. I find that the subjective complaints of the tenant and a few audio recordings to be inadequate to establish that the value of the tenancy has been reduced due to the noise level. The tenant made some reference to former roommates who have vacated the rental unit but called no witnesses, provided no written statements from other individuals and gave little testimony as to the effect the noise has had on their tenancy. I find the few minutes of audio recordings to be of little assistance as the sounds captured are indistinct and given little context as to their volume or frequency.

Based on the dearth of evidence submitted by the tenant I am unable to find that there is noise as the tenant complains about that is causing a loss of quiet enjoyment or value in the tenancy. I further find little evidence pertaining to the effect any noise may have had on their tenancy, I am unable to find that the tenant has met their evidentiary onus on a balance of probabilities. Consequently, I dismiss this portion of the tenant's application.

The parties agree that the landlord has taken some steps to address the noise caused by the air conditioning system of the building but the parties disagree on whether these measures have resolved the issue.

Based on the totality of the evidence I find that the landlord has taken reasonable steps in response to the tenant's complaints in an attempt to resolve the issue. Residing in a mixed-use rental building may involve noise from commercial activities or hardware necessary for the operation of those activities. I find that the landlord has responded to the tenant's complaints in a reasonable and timely manner by hiring technicians to attend on the site, replace parts and confirm the proper functioning of the systems. I find insufficient evidence that the landlord's actions are inappropriate or inadequate given the complaints of the tenant and find no breach of the *Act*, regulations or tenancy agreement such that an order of compliance is appropriate. Accordingly, I dismiss this portion of the tenant's application.

I find insufficient evidence that there is a need for repairs as the tenant suggests. I find the complaints of the tenant to be subjective and not adequately supported in their evidentiary materials. I find that the tenant has not met their evidentiary burden and consequently dismiss this portion of the application.

As the tenant was not successful in their application they are not entitled to recover their filing fee from the landlord.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

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: May 28, 2021

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Residential Tenancy Branch