



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC FFT

### Introduction

The tenant seeks an order pursuant to section 62(3) of the *Residential Tenancy Act* (“Act”), namely, that their right to quiet enjoyment “be enforced by Landlord to another Tenant, and an Eviction Notice be issued to said Tenant as a result of on-going and continuous Disturbances Above and Beyond Normal” (as described in the tenant’s application for dispute resolution). In addition, the tenant seeks to recover the cost of the application filing fee pursuant to section 72 of the Act.

At the hearing on August 26, 2021 the tenant, th advocate, and a representative for the landlord were in attendance. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

### Application for Dispute Resolution File History

The tenant made an application for dispute resolution on February 19, 2021. A dispute resolution hearing was held on May 27, 2021. The arbitrator in that hearing dismissed the tenant’s application in a decision dated May 27, 2021. On June 16, 2021 the tenant made an application for review consideration and a decision on that review consideration was issued on June 18, 2021. It was in that decision on review consideration that the reviewing arbitrator ordered that a new hearing take place. The new hearing (also called a review hearing) occurred before me on August 26, 2021.

### Issues

1. Is the tenant entitled to an order under section 62 of the Act?
2. Is the tenant entitled to recover the cost of the filing fee under section 72 of the Act?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on April 1, 2020 and monthly rent is \$985. The rental unit is a ground-level property in a multi-floor building. The occupants who used to reside in a rental unit above the tenant caused a great deal of noise.

This noise, which consisted of the noise of fighting, stomping, dragging of furniture across the floor, dropping of items, occurred over a period beginning in February 2021 until around sometime in June 2021. The noise occurred daily, at all hours of the day, including the very early morning hours, when the tenant was trying to sleep. It was throughout this period that the tenant, who works shiftwork in healthcare, suffered additional anxiety and sleep deprivation. It appears that the noisy family consisted of a mother and two teenage daughters. By all accounts, the threesome did not have a harmonious family dynamic. The tenant's concerns were conveyed to the property manager, who made attempts to alleviate and fix the issue. However, it does not appear that the noise abated until the family vacated the property sometime in June.

Since June, the tenant has only heard the odd noises of renovations occurring in the rental unit above them, and it does not appear that there are further noises of the same nature as when the family resided in the property. It was at this point in the hearing when the usefulness of ordering the landlord to issue a notice to end tenancy was discussed, and the tenant and their advocate agreed that there would not be any point. However, the advocate pointed out that the overall issue of noise transference from the above rental unit to the tenant's rental unit would continue to be a problem. And it was pointed out that there were previous discussions with the landlord whereby the landlord would install some sort of insulation between the floors, in addition to adding carpeting to certain areas of the upstairs rental unit. Finally, it was noted that the tenant previous to this tenant also had issues with noise; that tenant, however, did not testify.

In response, the landlord explained that, besides from the fact that the previous upstairs tenants did seem to be particularly noisy, that general noise (with the exception of yelling and fighting and so forth) would simply be a part of apartment living. The landlord did not know whether there was sound-proofing insulation between the floors, and he was not in agreement that they be made to make changes to the rental units.

### Analysis

Under section 62(3) of the Act, an arbitrator 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, the regulations or a tenancy agreement and an order that this Act applies.”

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.

In the dispute before me, the tenant had (when they made the application for dispute resolution) sought a specific relief: that the arbitrator orders the landlord to issue a notice to end tenancy against the offending tenants who resided above the tenant. Setting aside for a moment that such a relief is almost unheard of – that is, the ordering that a landlord issues a notice to end tenancy – while possibly within an arbitrator’s discretion under section 62(3) of the Act, the simple fact that the noisy mother and daughters have since vacated the property now renders this application moot.

It is not lost on me that the tenant was, and potentially will be, affected by noise from the upstairs rental unit. However, it is worth noting that the tenancy began in April 2020 but that the noise from the noisy family upstairs did not begin in earnest until early 2021. There did not appear to be any issue with noise before the family moved in. And there does not appear to be the same level of noise disturbance since they moved out, apart from some renovation and construction noise. Moreover, having lived in many wood-framed multi-storey apartments myself (including a turn-of-the-century building in Winnipeg), I am empathetic and fully understanding of the irritation that noise from adjoining apartments can create.

That said, there is no evidence before me that the rental unit is somehow different than any other typical living accommodation in a wood-framed building. All of which is to say, I find that ordering the landlord to take any steps (beyond the ones they already took when the family was residing upstairs) at this point is unnecessary. Future potential noise disturbances do not give rise to a situation whereby the landlord must be ordered to do something in the present. Should a future tenant of the upstairs rental unit give rise to an actionable claim for injunctive or compensatory relief, then the tenant remains at liberty to apply to the Residential Tenancy Branch if and when that situation arises. Last, it is worth noting that the parties appear to have a good history of communication, and this may well be the long-term solution that ultimately prevents future noise issues.

Taking into very careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving their claim for an order under section 62(3) of the Act.

Accordingly, their application is dismissed, as is the application for recovery of either the \$100.00 or \$50.00 application filing fees.

### Conclusion

**The tenant's application is hereby dismissed, without leave to reapply.**

As such, and pursuant to section 82(3) of the Act, the original decision of May 27, 2021 is varied for the reasons outlined in this decision.

This decision is made on delegated authority under section 9.1(1) of the Act

Dated: August 26, 2021

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Residential Tenancy Branch