



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BC HOUSING MANAGEMENT  
COMMISSION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, MNDCT

### Introduction

On December 21, 2020, the Tenant made an Application for Dispute Resolution seeking a Monetary Order pursuant to Section 67 of the *Residential Tenancy Act* (the “Act”) and seeking an Order to comply pursuant to Section 62 of the *Act*.

The Tenant’s Application was originally set down for a hearing on March 18, 2021 at 11:00 AM but was subsequently adjourned for reasons set forth in the Interim Decisions dated March 19, 2021 and April 19, 2021. This Application was then set down for a final, reconvened hearing on August 12, 2021 at 11:00 AM.

The Tenant attended the final, reconvened hearing, with A.R. and T.Bo. attending as advocates for the Tenant. T.Br. and L.V. attended the hearing as agents for the Landlord, and A.C. also attended the hearing as counsel for the Landlord. At the outset of the final, reconvened hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance, with the exception of A.C., provided a solemn affirmation.

At the original hearing, service of documents was confirmed by both parties. Therefore, all documentary evidence has been accepted and will be considered when rendering this Decision.

All parties 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 have her right to quiet enjoyment restored?
- Is the Tenant entitled to a Monetary Order for compensation?

#### 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 December 15, 2016, that rent was established at a subsidized amount of \$620.00 per month, and that it was due on the first day of each month. A security deposit was not paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

T.Bo. advised that the Tenant has experienced some problems in the past regarding vandalism to her car, a storage locker break in, and a confrontation with another resident. However, as per the Tenant's statutory declaration, starting in June 2020, a resident directly next door to her would continually direct harassing, offensive, or racist comments towards the Tenant. On June 8, 2020, this resident was observed hanging signs regarding the use of incense in the building and the Tenant believed these were directed towards her. A week later, the Tenant's car was vandalized, a Buddha statue was stolen from her door, and a bag of feces was left there. She called the police; however, the surveillance footage provided by the Landlord did not reveal any useful evidence.

On June 18, 2020, a letter was written to an agent of the Landlord requesting that these issues be addressed. This person mentioned facilitating a workshop for all residents of the building, but this was not organized. Over the next few months, the resident and

another neighbour were observed snooping around the Tenant's front door trying to determine where the smell of incense was coming from. The Tenant confirmed that she burns incense, but only in the rental unit with the doors and windows closed, and she never received any complaints prior to this date.

The Tenant believes that this resident has cameras mounted in this other unit and monitors the Tenant's movements. This was reported to an agent of the Landlord. On July 6, 2020, this agent for the Landlord issued a letter to all residents informing them that no evidence was found of incense being used in an inappropriate manner and the residents of the building must stop any personal investigations.

On October 6, 2020, the Landlord provided the Tenant with an air purifier to mitigate any potential incense odours. As well, the Tenant was offered to move to a different rental unit, but the Tenant believed it was not suitable. T.Br. suggested a meeting to address some of the Tenant's concerns, but weeks passed without a response from her. Meanwhile, in mid-November 2020, the resident continued to shout at the Tenant and hung up a dirty carpet and a curtain on a railing outside the rental unit.

Numerous emails were sent to T.Br. regarding these continuing issues and she only received a response on December 4, 2020; however, this letter only addressed some concerns that the Landlord had with the Tenant's actions. In this letter, the Tenant was also offered to be moved to another unit on that same floor, but this was also declined. The Tenant continued to have problems with this resident snooping around, so another police report was filed; however, they informed her that this was not a police matter.

On January 14, 2021, a meeting was held with another agent of the Landlord and amongst other suggestions, the Tenant was potentially offered a move, including moving costs, to another more suitable unit, if available. As well, the Tenant suggested that her safety is at risk and the resident should be evicted due to her behaviours; however, she was informed that the Landlord "doesn't evict tenants."

The Tenant confirmed the accuracy of these submissions and provided more details on incidents between her and the resident that causes her not to feel safe in the rental unit. She stated that she does not speak English very well, so she attempts to avoid contact with this resident. A.R. advised of several incidents where the resident would block the Tenant's path or would glare, while not wearing a mask for COVID-19 protection. As well, the resident was observed to be snooping outside the rental unit and was observed to glare at the Tenant through a window while she was doing laundry. The resident also said, "I'm watching you". T.Br. referenced a number of items submitted as

documentary evidence, including past Decisions of the Residential Tenancy Branch, to support the Tenant's position that her right to quiet enjoyment has been breached and that she is entitled to an amount of **\$2,790.00** for the nine months of this ongoing harassment.

A.C. advised that this is a case of two ladies of similar age, who have lived in the building for a significant period of time, being in conflict with one another. These issues are exacerbated by the socio-economic demographic of the residents, the close proximity of the residents, and the COVID-19 pandemic. She submitted that the most recent conflict started in June 2020 when the Tenant was burning incense inside and outside of the rental unit. She stated that the Tenant initially denied burning incense outside; however, she later admitted to doing so, and then stopped burning this outside altogether. She advised that the conflict between the parties has been investigated and this is a matter of he said/she said. The Landlord took steps to manage this conflict and offered the Tenant with two options to move, but these offers were rejected. The resident eventually elected to move to another unit on the same floor to get away from the conflict. A.C. refuted the Tenant's claims that she has difficulty with English as the Tenant would always communicate this way. As well, an agent for the Landlord confirmed that the Tenant did not have difficulties communicating in English.

T.Br. advised that the Landlord has taken steps to investigate the Tenant's complaints. She stated that the Tenant's claims of theft of personal property happened to an item that the Tenant left outside on common property. There was no proof of if this theft did happen or who might have committed it. Regarding the Tenant's claims of name calling, this was investigated and it was determined that there was no proof of this but if anything, it was likely both parties engaging in similar behaviours. She stated that the incidents of the Tenant and the resident photographing and filming each other are a police matter. The conflict was discussed with the police and she was informed that there was no criminal behaviour of the parties. This was simply a matter of two people with conflict amongst themselves.

Regarding the Tenant's complaint about an incident involving the resident blocking her path, it is unclear whether or not the Tenant was courteous in asking to get by. As well, the Tenant could have taken an alternate path and did not have to necessarily use that specific route. With respect to any tenants of the building not wearing masks, signage was put up to remind them of the provincial requirements. The incident where the resident was allegedly watching the Tenant in the locker room was dealt with and there have been no similar reports since.

She advised that numerous attempts were made by staff to reach out to the Tenant to resolve some of the conflict between the parties, but the Tenant refused. The Tenant was provided with two alternate units to move to, but she refused these as well. The Landlord provided the Tenant and the resident with air purifiers in an attempt to mitigate the incense smell. As well, the Landlord installed weather stripping, sealed holes in the rental unit, and advised the Tenant to close her windows, all in an attempt to reduce the odour of incense that might transfer out of the rental unit.

Regarding the incident with the carpet and the curtain on the railing, she advised that the Tenant threw the resident's heavy carpet off the railing and hung up her own items. This carpet was heavy and could have hurt someone after falling from a significant distance. The resident came out and the parties then engaged in a heated argument. The Tenant then proceeded to throw the resident's curtain off the railing in the same manner as the carpet.

A.C. referenced a number of items submitted as documentary evidence, including past Decisions of the Residential Tenancy Branch, to refute the Tenant's claims and to demonstrate that the Landlord has been actively taking steps to manage the conflict that both the Tenant and the resident are engaging in.

She also submitted that the police recently contacted the Landlord regarding a harassment complaint from the resident against the Tenant. The Landlord was notified that if the situation continued, the police would be serving the Tenant with a "no go" order. T.Br. advised that the police informed her that this would require that the Tenant refrain from being in close proximity with the resident. As well, the police informed her that the pettiness between the parties must stop and a letter will be issued by them to the parties regarding this warning.

T.Bo. confirmed that the Tenant received a letter from the police, but this did not indicate that they would be taking any further action, which is contrary to the above submissions. She questioned T.Br. if any written warnings were provided to the Tenant regarding any verbal assault and T.Br. stated that a letter dated May 14, 2020 was issued to the Tenant regarding this matter. As well, an agent for the Landlord spoke to the Tenant warning her about this conflict and her behaviours.

T.Bo. confirmed with T.Br. that the Tenant utilized a walker to move around, and she suggested that the Tenant would have been too weak to throw a heavy carpet off the balcony. She speculated that the Tenant was more likely to have "gesticulated" and accidentally knocked it off the railing.

A.C. advised that the Tenant issued a blanket denial of all accusations against her, which would not likely be credible in situations where two parties have an ongoing conflict with one another. As well, she submitted that T.Br. testified to instances where she spoke with the Tenant about the ongoing issues between the parties. Finally, she submitted that the Landlord has taken numerous courses of action in an attempt to manage the dispute between the parties; however, the Tenant is unwilling to compromise or stop her role in continuing this conflict with the resident.

### 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* pertains to the Tenant's right to quiet enjoyment of the rental unit.

Regarding the Tenant's claim of a loss of quiet enjoyment, I note that 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.

Section 67 of the *Act* allows for compensation to be awarded should there be a breach of the *Act*.

In addition, I find it important to note that with respect to the Tenant's request for monetary compensation, when establishing if this is warranted, Policy Guideline # 16 outlines that when a party is claiming for compensation, "It is up to the party who is claiming compensation to provide evidence to establish that compensation is due", that "the party who suffered the damage or loss can prove the amount of or value of the damage or loss", and that "the value of the damage or loss is established by the evidence provided." The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred, and that it is up to the party claiming compensation to provide evidence to establish that compensation is warranted. In essence, to determine whether compensation is due, the following four-part test is applied:

- Did the Landlord fail to comply with the *Act*, regulation, or tenancy agreement?
- Did the loss or damage result from this non-compliance?
- Did the Tenant prove the amount of or value of the damage or loss?

- Did the Tenant act reasonably to minimize that damage or loss?

When reviewing the totality of the evidence before me, it is apparent that the main source of conflict here is due to the deterioration of the relationship between the Tenant and the resident, whom the Tenant believes is purposefully targeting her. It appears as if there may have been a suspected conflict between these parties in the past as well. Regardless, it is evident that the relationship between those parties has become contentious and heated.

I note that it is incumbent on persons living in a shared complex to co-exist together peacefully, and it is not the role of the Landlord to manage personal differences between their tenants. However, when disputes devolve to the point that the parties' right to quiet enjoyment may be compromised, it is up to the Landlord to investigate the issue after being advised of the problem to determine if there is any fault of one or both of the parties.

In the case before me, I am satisfied that the Tenant has advised the Landlord that she believes that the resident has breached her right to quiet enjoyment of the rental unit. It is also apparent that it is the Tenant's belief that the Landlord has not taken the appropriate action and dealt with her concerns to her satisfaction. While I acknowledge that there may be some disputes between the Tenant and the resident, it is still up to the parties to work together in a mature manner to resolve any personal differences that they may have with each other. I note that in cases such as this one, these situations arise generally because it is not only one party that is at fault.

As noted above, I accept that the Tenant has raised these allegations about the resident's behaviour with the Landlord. However, I find that there is ample evidence before me that the Landlord has taken numerous steps to address the Tenant's concerns, proposed different solutions to manage the ongoing dispute, as well as provided equipment to both parties in an attempt to resolve the incense smell.

While I have no doubt that the resident may be engaging in behaviours that are jeopardizing her own tenancy, I also find it unlikely that the Tenant is also not engaging in behaviours that either instigate conflict or contribute to the deteriorating relationship. As an example, T.Bo. portrayed the Tenant as being frail and as such, suggested that the Tenant would not have been physically able to throw the resident's heavy carpet off the railing. However, I find it reasonable to conclude that moving a heavy object would require intention and effort, and a similar force necessary to do so would not likely come from T.Bo.'s suggestion that this was due to the Tenant accidentally gesticulating wildly.

When weighing the totality of the evidence before me on a balance of probabilities, I am skeptical that the Tenant is not contributing to this conflict. In my view, it is evident that both the Tenant and the resident have been having difficulty living together and have, more likely than not, been antagonistic towards each other, instead of attempting to live in a shared property amicably.

As I am satisfied that the Tenant is at least partially responsible for the discord between the parties, I do not find that she has established a claim of a loss of quiet enjoyment of the rental unit as she has not acted reasonably to minimize that damage or loss. Furthermore, I do not find that she is entitled to monetary compensation for a situation that she is partly responsible for creating and exacerbating. Ultimately, I am not satisfied that the Tenant has sufficiently established her position and as a result, I dismiss her claims in their entirety.

### Conclusion

Based on my findings above, I dismiss the Tenant's Application for an Order for quiet enjoyment and monetary compensation in its entirety.

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: August 28, 2021

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Residential Tenancy Branch