



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Nanaimo affordable housing society and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC

### Introduction

The tenant filed an Application for Dispute Resolution on June 28, 2021 to request the landlord's compliance with the legislation and/or tenancy agreement. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on October 18, 2021.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other. On this basis, and with opportunity for each party to ask questions on the hearing process, the hearing proceeded.

### Preliminary Matter – monetary claim

The tenant added evidence to their submissions to the Residential Tenancy Branch 17 days before this hearing. The landlord confirmed they received these additional pieces via email as attachments. This represents a monetary claim for reimbursement from the landlord. In the hearing, the tenant specified this was "compensation accrued for safety and health" in what they presented as a dangerous situation in the tenancy.

The *Residential Tenancy Branch Rules of Procedure* provide for a tenant amending their Application, to add, alter, or remove claims made in the original application. This is done so by the tenant providing an Amendment to an Application for Dispute Resolution form and supporting evidence.

Here, the tenant did not amend their Application to provide particulars on compensation. Moreover, they did not include a detailed calculation of this monetary claim. They submitted

invoices they paid for a service; however, there was no worksheet, or calculation of the final amount they seek for reimbursement. The tenant bears the onus to prove the exact amount of monetary loss to them, and how it stems from a landlord's breach of the agreement/legislation. I note the *Rules of Procedure* specify a detailed calculation of any monetary claim being made.

I make no review of the tenant's materials for what they presented in the hearing re: compensation. To do so would be prejudicial to the landlord, as the absence of a calculation makes it difficult, if not impossible for the landlord to prepare a response. This lack of particulars is contrary to the principles of natural justice and procedural fairness.

### Issues to be Decided

Is the landlord obligated to comply with the *Act*, the regulations, and/or the tenancy agreement, as per s. 62 of the *Act*?

### Background and Evidence

The tenant gave the history of the situation that gave rise to their filing this Application. This began in November 2019, with occupants in the adjacent unit having issues with noise and smoke that entered the tenant's own unit. This was the reason for constant communication to the landlord, and things escalated to the point where people affiliated with the adjacent unit threatened the tenant with violence.

This expanded from a single unit to two others, causing a serious problem for the tenant. The tenant sought counseling for the anxiety and stress this issue was causing them and their family. This was having, and continues to have, a serious impact on their mental and physical health, as well as members of their family.

The tenant described how the landlord would merely write it down and not take action. Though a security guard was hired and present in the building, they did not intervene or take significant action in more serious situations. The tenant described how their main contact at the landlord's office changed, and there was a lack of communication back to the tenant which meant to them that this situation was not a priority for the landlord.

The landlord responded to state they were very aware of the ongoing issues and the impact they were having on the tenant and their family. After the government-imposed moratorium on evictions in 2020, the landlord successfully evicted the problematic occupants in the three

units. The landlord stated they were in the active process of ending another problematic tenancy.

The landlord presented their documentary evidence that shows “just a fraction” of the communication with the most problematic unit for the tenant here. They were limited by privacy concerns in what they could share with the tenant here about the investigation, their communication with other occupants, and their ability to end any other tenancies.

The landlord also set out they hired a private security firm specifically for this issue. This was to go the “extra mile” and ensure safety, and this continues to the present day. The landlord described how they were hampered by public health orders and could not have a steady presence in the business office; however, each call or issue raised by the tenant prompted a visit or response, and they continued to make daily visits to the property.

Also, the landlord described how, for the most problematic neighbouring unit, they applied for an expedited hearing process to end that tenancy. In this they were denied, with that Arbitrator not satisfied on the evidence of police involvement.

### Analysis

The *Act* s. 62(2) provides that:

The director 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 order that this Act applies.

In this matter, I find the landlord has acted with the tenant’s rights and interests in mind.

The landlord was acknowledging the severity of the situation for the tenant. I heard these statements from the landlord in the hearing, and I see the documents that the landlord submitted show their ongoing attention to the matter. This also reveals the landlord was responding to the tenant’s queries, investigating, and addressing infringements.

I find the landlord acted also with regard to their own responsibilities under the *Act* with regard to other residents in the area who were causing a problem for the tenant here. Weighing this into the balance – wherein the landlord described their knowledge of privacy impacts and the need for procedure – I find it more likely than not that the landlord was aware of the legal responsibilities involved in ending a tenancy and acted accordingly.

Further, I find the landlord took seriously the claims of the tenant here when hiring a private security firm. This is an expense carried by the landlord to ensure safety, which is a fundamental right to which the tenant and their family is entitled. On my review, there were visits by the police, and it is very difficult to conclude the landlord was not alive to the situation and attending to matters in the most expedient way possible.

From what the tenant describes – none of which was denied by the landlord – this was an extreme situation. I am satisfied this required a concentrated effort by the landlord who was also adjusting to the situation of a government-imposed halt on evictions. There is no question this caused ongoing severe difficulty for the tenant. I cannot find the landlord was complacent in any way; nor can I find the landlord through action or inaction contributed to this serious situation.

In sum, I find the landlord was not in a position to circumvent the law, or the rights of other parties, in dealing with this difficult situation. I make no order for the landlord to comply with the legislation and/or tenancy agreement in this situation where the problem has effectively ended.

### Conclusion

For the reasons above, I dismiss the tenant's Application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 18, 2021

---

Residential Tenancy Branch