



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      RR, OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an amended application made by the tenants seeking an order reducing rent for repairs, services or facilities agreed upon but not provided; an order that the landlord comply with the *Residential Tenancy Act* or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

Both tenants and the landlord attended the hearing and each gave oral submissions. The parties agree that evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Have the tenants established that rent should be reduced for repairs, services or facilities agreed upon but not provided, particularly for the landlord's failure to provide quiet enjoyment of the rental unit?
- Have the tenants established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement, particularly with respect to continued quiet enjoyment?

### Background and Evidence

The parties agree that this fixed term tenancy began on May 1, 2017 and reverted to a month-to-month tenancy after April 30, 2018 and the tenants still reside in the rental unit. Rent in the amount of \$1,500.00 is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. On April 18, 2017 the landlord collected a security deposit from

the tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a condominium apartment on the 15<sup>th</sup> floor of a strata complex and a copy of the tenancy agreement has been provided as evidence for this hearing.

The first tenant submitted that no one answers the telephones at the strata office, so the tenant has been emailing. On April 15, 2021 the tenant sent a complaint with a recording about continuous noise. The noise started at 5:30 or 6:00 a.m. every day, and recordings have been provided as evidence for this hearing.

The response from the strata the next day was “noted” and the strata wrote up a report and were going to reach out to the people in the unit above to discuss, but the people in the unit above said they also heard noise. The strata also advised that further investigation by the building manager resulted in the same sound being heard 2 floors above, on the 17<sup>th</sup> and 25<sup>th</sup> floors, so were consulting with a mechanical company.

The tenant continued to send complaints to the strata, and 6 emails and phone calls were not responded to. It took until May 14 for a reply stating that the concierge went to the unit on the 16<sup>th</sup> floor and knocked on the door many times but there was no answer and no lights were on. The tenant suggested a meeting, and booked a Zoom meeting in June but the people in the unit above were not available. The tenant also provided the strata with more recordings in preparation for the meeting.

The tenants tried to resolve it with the building manager and concierge but they told the tenants to call the landlord; it was the landlord’s responsibility. The tenants did so by sending the landlord emails that had been sent to the strata but no action was taken by the landlord. The landlord’s response was that the tenants should move out, but that’s not fair. The tenants even called police, and invited the landlord to stay at the rental unit and the tenants would go to a hotel, but the landlord declined.

The tenant has an ulcer which is irritated by stress and this affected the tenants’ physical and mental health. All the landlord did was send emails. It became back and forth without any resolve. The tenants couldn’t attend a Zoom meeting due to their challenging jobs, but didn’t need to be there. They gave all recordings and emails to the landlord, so the landlord had everything she needed; it was between the owner and the strata.

It seems that the people who were in the unit above have moved out, but for 1 year the tenants experienced the awful noise. There are different types of noise, so not a

problem now. The tenants seek compensation for the landlord's failure to do anything about the complaints.

The landlord submits that the first involvement of the landlord was receipt of the tenants' email on March 16, 2021. The strata had suggested doing a test by having the people in the upper unit vacuum with the building manager near, but the tenants didn't agree, saying that it wouldn't help or determine the cause; it was other machines.

The tenants didn't pay rent for 3 months and said they wouldn't pay it until the noise was taken care of. The parties attended a hearing with the Residential Tenancy Branch about a month ago about the unpaid rent. The tenants were ordered to pay the arrears.

In response, the tenants submit that they didn't know the law or the tenants' rights and responsibilities, and the tenants paid all of the rental arrears within 2 days of the hearing.

### Analysis

In this case, the tenants seek monetary compensation for the landlord's failure to provide the tenants with quiet enjoyment of the rental unit, and the onus is on the tenants to establish that they suffered such a loss due to the landlord's failure and that the tenants did what was reasonable to mitigate any damage or loss suffered.

I have listened to all of the audio recordings, and in my opinion comes from some sort of construction with grinders, saws, fans and hammering. Some are louder than others but all are irritating.

I have also reviewed all of the tenants' communication with the landlord and responses.

On December 29, 2020 the tenant sent an email to the concierge about the noise. There is nothing to suggest that the concierge ever forwarded the concern on to the landlord. On March 16, 2021 the tenants sent an email to the concierge, the strata and the landlord. I agree with the landlord that the landlord's first involvement was that email.

On April 15, 2021 the landlord sent an email to the strata stating that the situation needed to be rectified urgently; the tenants were extremely angry and annoyed. On

April 19 the landlord notified the tenants that the concerns had been forwarded to the strata. On April 22 the tenant enquired with the landlord again, who then sent an email to the strata for an update. Once the tenants withheld rent, the landlord again asks the strata for an update, dated May 10 and again on May 12 and May 14. On May 19 the landlord emailed the tenant suggesting that the landlord attend to experience the noise first hand. The tenant responded the next day that there is no fixed schedule for the noise, so the tenant is not sure if that would be practical.

I agree with the tenants that this was an issue between the strata and the landlord to correct. There was no need for a Zoom meeting and I don't see how that would have solved anything. I also note that there was almost a month space between the landlord's follow-up emails to the strata which ended when the tenants refused to pay rent.

I am satisfied in the circumstances that the tenants have suffered a loss of quiet enjoyment of the rental unit due to the landlord's failure to comply with the *Act* by providing the tenants with quiet enjoyment of the rental unit. I am also satisfied that the tenants didn't just complain, but offered solutions. Although the landlord is not required to stay at the rental unit overnight while the tenants stay in a hotel, the landlord did not do what was reasonable to protect the tenants' rights.

The tenant submitted that the noises persisted for a whole year and the tenants claim \$15,000.00 as compensation. Having found that the landlord was first aware of the problem on March 16, 2021 and the noises have ceased, but had not ceased prior to the hearing in October, 2021, I find that the tenants have established the loss over a period of 7 ½ months.

Although there is no substantiated evidence, I accept the undisputed submission of the tenant that the tenants' mental and physical health suffered, and I find that was exasperated by the lengthy time, and the tenants did what they could to mitigate any losses.

I am not satisfied that the noises occurred all day every day. Rent is \$1,500.00 per month, and given the disruptions, I find that the tenants have established 25% over a 7 ½ month period, or \$2,812.50.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenants as against the landlord in the amount of \$2,912.50 and I order that the tenants be permitted to reduce rent for future months until that sum is satisfied, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

The tenants have also applied for an order that the landlord comply with the Act, regulation or tenancy agreement, and I order that the landlord ensure the tenants' right to quiet enjoyment is protected.

### Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,912.50 and I order that the tenants be permitted to reduce rent for future months until that sum is realized or may otherwise recover it.

I hereby order the landlord to comply with the *Residential Tenancy Act* by ensuring that the tenants' right to quiet enjoyment is protected.

This order is final and binding and may be enforced.

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: November 22, 2021

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Residential Tenancy Branch