



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC

### Introduction

On August 19, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) asking that the Landlord comply with the Act, Regulation, or Tenancy Agreement.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

- Is the Tenant entitled to an order requiring the Landlord to comply with the Act, Regulation, or tenancy agreement?

### Background and Evidence

The Landlord and Tenant both testified that the tenancy began in June 2021 and is on a month-to-month basis. Rent in the amount of \$472.00 is to be paid to the Landlord by the first day of each month.

The Landlord and Tenant testified that the rental property is a new multi-unit residential property permitting adults and children with four floors and 80 rental units. The Landlord stated that the construction is wood frame and the Landlord testified that the rental units do not contain carpeting.

The Tenant's advocate stated that shortly after the tenancy began on June 4, 2021, the Tenant sent the Landlord a letter regarding noise disturbances she has encountered in the rental unit. The advocate stated that the noise often occurs after hours as there is to be no noise after 10 pm. The Tenant indicated that some noise occurs during the day.

The Tenant's advocate stated that the Tenant made written complaints to the Landlord on nine occasions and there has been no change to the noise. The Tenant's advocate stated that the Tenant believes the noise is retaliatory in nature and provided an example that sometimes when she turns on her water faucet, she hears a loud bang.

The Tenant's advocate stated that the Tenant had a confrontation with a neighbour in the unit hallway and she has found vandalism on her door and her car window.

The Tenant was asked to describe the noise that she is hearing and replied that the noise is repetitive banging of heavy objects and sound like furniture dragging across the floor. She stated that the noise is 100% coming from the rental unit located above her unit.

The Tenant feels that the Landlord is not treating her fairly by taking appropriate action and that the noise is affecting her ability to enjoy her suite.

In response to the Tenant's testimony, the Landlord testified that their policy requires tenants to make complaints using a form provided by the Landlord. The Landlord stated that information on their form must be complete or else the Landlord will not take any action. When asked if they respond to a tenant when a form is submitted incomplete, the Landlord stated that they would not ask a tenant to fix a complaint form unless the Landlord found the issue to be quite serious.

The Landlord provided testimony confirming that they have received about nine written complaints from the Tenant and stated that they did not act on a couple of the complaints they received.

The Landlord was asked if they took any action regarding the Tenant's complaints and the Landlord replied that they spoke to the occupant living above the Tenant about making noise that disturbs others. The Landlord stated that for privacy reasons, she cannot discuss any other action that the Landlord may have taken.

The Landlord stated that in September 2021 they offered to transfer the Tenant to another rental unit; however, the Tenant did not respond to that offer.

The Tenant stated that she was informed that BC Housing would have to approve the transfer and that she applied and was denied.

The Landlord stated that they can do an internal transfer without the approval of BC Housing, and that they will consider it if a future vacancy comes up; however, the Tenant needs to submit the application.

The Tenant's advocate stated that the Tenant did her best to fill out the complaint forms and most, if not all, the fields were complete.

### Analysis

Section 28 of the Act, states that 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
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.*

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

The issue for me to determine is whether or not the noise disturbances amount to substantial interference with the ordinary and lawful enjoyment of the premises and whether or not the Landlord has failed their obligation to protect the Tenant's right to quiet enjoyment.

I have considered whether or not the noise coming from the unit located above the Tenant is unreasonable and amounts to substantial interference with the ordinary and lawful enjoyment of the premises. The residential property is occupied by families and is a multi unit wood frame construction building that has no carpeting. I find that a Tenant's entitlement to quiet enjoyment does not mean freedom from all noise or disturbance. The Tenant chose to rent a unit in a multi-unit wood frame building that permits families. I find that it is reasonable to expect to hear some noise from day to day living, including day to day living noise that occurs after 10 pm.

I have reviewed the Tenant's documentary evidence of written complaints sent to the Landlord. I accept the Tenant's evidence that she has experienced noise from the unit located above her. I find that the noise disturbances appear to be caused by banging noises and dragging noises coming from above. I note that there is no carpeting above to lessen any noise. Neither the Landlord or Tenant made submissions on whether or not the upper unit is occupied by young children. Based on the description of the noise as banging, dropped items, loud footsteps, and furniture being moved, it appears to me that the noise is not caused by negligent acts, such as loud yelling, loud music, or a loud television, meant to intentionally disturb the Tenant living below. It appears to me that the construction /character of the multi unit residential building is such that the rental units are not very sound insulated. The noise as described can be attributed to noise from day to day living.

I am also mindful that the Tenant appears to be sensitive to noise as she submitted documentary evidence that she has post concussion symptoms which affects her sleep.

I accept the Landlord's testimony that they responded to some of the Tenant's written complaints about noise by speaking to the occupants living above the Tenant.

After considering the evidence before me, the character of the building, I find that the noise disturbances are mostly from day to day living in a building with poor sound insulation and therefore the noise is not unreasonable. I find that the Landlord has taken steps to deal with some of the Tenant's complaints and therefore they have not breached the Act by failing to take steps to protect the Tenant's right to quiet enjoyment.

With regard to the Landlord's requirement for tenants to use a specific complaint form and to decline to take action if the form is not 100% complete, the Act is silent on the use or requirement for a specific complaint form; however, a landlord is obligated to ensure that a tenants entitlement to quiet enjoyment is protected and the Landlord is cautioned that they can be held responsible in situations where they are aware of an interference or unreasonable disturbance, but fail to take reasonable steps to correct the problem.

### Conclusion

After considering the evidence before me, and the character of the building, I find that the reported noise is mostly from day to day living in a building with poor sound insulation and therefore I find that the noise is not unreasonable. I find that the Landlord has taken steps to deal with some of the Tenant's complaints and therefore they have not breached the Act by failing to take steps to protect the Tenant's right to quiet enjoyment.

The Tenant's application for the Landlord to comply with the Act, regarding peaceful enjoyment of the rental unit is dismissed.

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: December 29, 2021

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Residential Tenancy Branch