



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1932374 Alberta LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, MNDCT, FFT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord provide quiet enjoyment and a monetary order.

The original hearing was conducted via teleconference on December 20, 2021 and was attended by the tenant and her two legal counsel and two agents for the landlord. Due to a shortage of time the hearing was adjourned and reconvened on January 19, 2022. The same participants attended the reconvened hearing.

During the adjournment, I had ordered the tenant's counsel to provide to the Residential Tenancy Branch and the landlord a summary of her submissions with specific references to their documentary evidence. Counsel did so on December 20, 2021.

Neither party raised any issues with the service of hearing documents and/or evidence.

At the outset of the hearing the parties confirmed the name of the landlord is the numbered company only and does not include the provided DBA or the landlord's onsite agent. As such, I have amended the Application to provide the correct landlord name and exclude the named agent.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order requiring the landlord to comply with the obligation to provide quiet enjoyment; to a monetary order for compensation for the landlord's failure to provide quiet enjoyment and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 28, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The tenant submitted into evidence a copy of a tenancy agreement signed by the parties on October 31, 2019, for a monthly rent of \$975.00 due on the 1<sup>st</sup> of each month

with a security deposit of \$487.50 and a pet damage deposit of \$243.75 paid. The tenancy agreement includes four-page addendum with 23 additional terms.

The tenant seeks orders to have the landlord comply with Section 28 of the *Act* and for compensation for the landlord's failure to comply with this section. The tenant submits her claim under two primary headings: Use of Common Areas free from Significant Interference and Unreasonable Disturbance and Reasonable Privacy and Unreasonable Disturbance.

The tenant seeks compensation in the amount of \$1,200.00 representing a rent reduction in the amount of \$100.00 per month for the period of August 2020 to August 2021, for the loss of quiet enjoyment. The tenant has created a breakdown of the value of the components of this tenancy and relies on a previous Residential Tenancy Branch decision from September 2021 where the applicant in that case requested the same amount. I note that while the tenant in that decision sought \$100.00 per month for 8 months or \$800.00; the arbitrator awarded \$200.00.

#### *Use of Common Areas Free from Significant Interference and Unreasonable Disturbance*

Under this section of the tenant's submissions the tenant identifies very specific incidents related to the actions of another occupant of the residential property. Specifically, the tenant asserts that the occupant (DG) has been significantly interfering with "both the applicants and other tenants use and enjoyment of common areas."

In support of this claim the tenant provides 6 specific incidents including:

1. August 14, 2020 – DG spray paints a freezer beside the tenant's scooter and garden. The tenant's daughter asked DG to stop but DG yells at her and continues. The tenant submitted that "eventually a sheet was placed on the scooter to prevent damage", however, the tenant does not explain how or why that occurred. For example, did DG, the tenant's daughter, or the landlord resolve the issue.
2. August 15, 2020 – DG asked what was wrong with the tenant's grandchild; the tenant responded she had a lung problem and DG then lit a cigarette and smoked it, "knowing it would harm the applicant's granddaughter. The tenant submits this a breach of a material term of DG's tenancy agreement. The tenant provided no submissions on how she knew what terms were in DG's tenancy agreement.
3. August 16, 2020 – the tenant submitted that while going between her rental unit and a nearby park DG verbally harassed the tenant. She submitted she told him to stop, or she would call police. But, she submitted, he continued to yell profanities at her every time she left her unit.
4. August 18, 2020 – a different occupant of the residential property (JM) shares some text messages between herself and DG calling the tenant names, stating

that he has retaliated; and making threats. The tenant submitted that she filed a complaint with the landlord and police. Specifically, one of the text messages identified as coming from DG states:

“You crossed the line hope you have cat there right now and clarence will be notified tonight your shit in infront of my place get it gone and stay away from me I’m not a good person .to attack with lying bull shit you have made a large mistake here with know fix hope you and Diane try to have good life it seems your very confused and I feel sorry for you you x freind over and out”

[reproduced as written]

5. The tenant submitted that in addition to the other issues DG was sells cigarettes and moonshine from his cabin. In support of this assertion, the tenant submitted a copy of an email she sent to the landlord on August 20, 2020 making the allegation. The tenant asserts that in addition to being illegal, it is contrary to DG’s tenancy agreement. Again, I note the tenant does not expand on how she knows the content of DG’s tenancy agreement.
6. February 2, 2021 – the tenant emails a complaint to the landlord stating that for the past 2 months DG has had people coming and going from his cabin all hours of the day carrying large bags and suitcases. She complains that this has caused her disturbance to the point that she is unable to sleep. The tenant suggests that this activity a breach of a material term of DG’s tenancy. As noted above, the tenant provides no submissions on how she knows the content of DG’s tenancy agreement.

The tenant submits that despite knowing of these incidents the landlord has failed to act on and resolve any of them. The tenant allows that the landlord did respond to her email of August 20, 2020 asking if the tenant would be willing to provide an affidavit and participate as a witness if required. The tenant provided evidence that she responded in the affirmative to the landlord, but that she has heard nothing since and the landlord has taken no further action.

The tenant acknowledges receipt of an apology letter dated September 8, 2020 from DG but that she was not informed of any other actions taken by the landlord. The tenant submitted that despite the apology letter DG continue to interfere with the use of common areas as shown by the February 2, 2021 complaint.

The tenant submits that as a result of an argument with the landlord’s onsite manager the landlord sent her a letter requiring her to remove items stored on the exterior of her rental unit. The tenant submits that all occupants of the residential, including the onsite manager, store things on the exterior of the building and in common areas. The tenant submits she has been singled out to remove her stored items. The tenant has provided no confirmation from any other occupant that they were not required to remove any and/or all stored items from common areas.

In support of this position the tenant has provided several photographs. They also suggested that despite the landlord’s submission of photographs showing no items

stored in common areas, they believe that items were specifically removed for the sole purpose of taking these pictures in response to the tenant's evidence intending to question the tenant's credibility at this proceeding.

### *Reasonable Privacy and Unreasonable Disturbance*

The tenant submits the second breach of her right to quiet enjoyment arises from three specific incidents.

1. Harassment/interrogation of any friends/family that visit her. The tenant submits that whenever her friends and family attend the property to visit her they are "consistently pestered by Mr. C (onsite manager) and asked to show him their ID's and license plate numbers." In support of this claim the tenant submitted into evidence a typewritten account of this issue but provides no dates of these interactions. The tenant also asserts the landlord's onsite manager peers into windows making the tenant's guests uncomfortable.
2. The tenant submits that in January 2021 the tenant complained about DG partying late into the night and the noise disturbing her and the next day the onsite manager moved the security cameras to face directly to her rental unit. In support of this position the tenant has submitted several photographs of a security camera on a post – one is dated November 21 but the other pictures are undated. The tenant submits it is easy to tell when the cameras are redirected because it must be manually done.
3. The tenant submits that on "several occasions the onsite manager has manually placed the sprinkler in front of the applicant's cabin "making it difficult for her to leave or enter her unit without getting wet, soaking her barbeque and furniture in front of her unit and preventing her from enjoying the space in front of her cabin". The tenant referenced her email to the landlord dated April 22, 2021 in which she states that on May 16 at 5:00 p.m. the onsite manager watered the grass and it flooded the front of my place. She goes on to say that on May 19 around 3:00 p.m. she started the sprinkler again with fertilizer. I note that these statements are made after she has written that she usually sits on the side of her unit because everyone in the courtyard is smoking. The tenant's submission on this point, with reference to the photographs submitted into evidence, states: "the pictures display that the sprinkler mostly sprays water on the cement immediately in front of the applicant's unit and less so on the grass; making it clear the sprinkler is more so to unreasonably disturb the applicant and less so to maintain the grass." I note that one of the pictures submitted shows a sprinkler in front of the central two-story building and not in front of the tenant's unit.

The tenant submits that in June 2021 the tenant went to a local advocacy group who wrote to the landlord outlining the tenant's dissatisfaction of the landlord's response to her complaints. The landlord responded by asking what remedies the tenant was seeking. In response, her advocate wrote back requesting:



1. A written apology from the landlord for their failure to respond to the tenant's complaints;
2. That DG be evicted;
3. That the onsite manager be removed or provided with communication and sensitivity training.

The tenant submits that since she did not hear a response from the landlord in a timely fashion, she filed her Application for Dispute Resolution. The tenant acknowledges she received a response on September 14, 2021 which directed her to have no further communication with the onsite manager and that all communication should be sent to the corporate email account.

The tenant submits that this response is inadequate as it allows the onsite manager to remain a tenant and it fails to take into consideration any of the issues related to the other occupant DG.

The landlord testified that in August 2020 after the tenant lodged her complaints against DG the landlord followed up by issuing a Notice to End Tenancy to DG. However, after issuing the notice and he interviewed other occupants and agreed to withdraw the Notice to End Tenancy if DG wrote a letter of apology to this tenant and two others and since then the landlord has not received any further complaints (with the exception of the February 2021 complaint of late night traffic and noise disturbances). He believed the situation to be resolved. He acknowledges that he did not communicate any of this to the tenant.

The landlord submitted that security cameras have been in place since 2016 and are there to monitor traffic. He testified that the cameras are battery operated and require frequent battery changes. He stated they provide 110 degree coverage; they cover between 30 and 50 foot range and are motion activated. He stated that there are 4 cameras in all but that not all work.

In regard to the storage issue, the landlord testified that it was incorrect to state they do not enforce the storage rules. The landlord submitted that it was likely in 2020 that the tenant started storing her paddleboards on the side of her rental unit but it was not until early in 2021 that they followed up on the issue with the tenant.

The landlord responded to the tenant's assertions that others including the onsite manager stored their belongings in many locations on the residential property. In particular the landlord commented on the photographs submitted by the tenant. The landlord testified that some of the photographs showed landlord's equipment for cleaning and repairing rental units and common areas. In the case of the photographs of mattresses stored outside the landlord testified these items were there temporarily while work was being done to one of the rental units.

The landlord took offence to the tenant's submissions that the landlord's photographic evidence represented a specific action taken by the landlord to discredit the tenant's evidence, by taking his photographs directly after areas were cleaned up. The tenant's counsel responded by asserting they were not questioning the landlord's integrity but that they were questioning only the content of the photographs.

The landlord's onsite manager provided testimony in regard to his interactions with the tenant's daughter and granddaughter. He stated that he simply was responding to the fact they were making noise beyond the restricted time (after 10:00 p.m. in winter and after 11:00 p.m. in summer).

The landlord submitted that in regard to the complaint submitted in February 2021 regarding the late-night noise and vehicle parking issues alleged of DG, he personally reviewed the security camera footage for 30 days prior to the tenant's complaint and he found no evidence that corroborated her accounting of disturbances. The landlord acknowledged that he did not follow up with the tenant.

### Analysis

When a party makes a claim that the other party is in breach of their obligations under a tenancy agreement, the burden rests with the party making the claim to provide sufficient evidence to establish the second party has breached the *Act*, regulation or tenancy agreement.

Furthermore, to be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

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. In the case before me, I find the tenant has failed to provide sufficient evidence to establish her claim.

Section 28 of the *Act* stipulates 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 [landlord's right to enter rental unit restricted]; and

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Primarily, the tenant relies on her own verbal account for events, some of which she was not even present for at the time they occurred. For example, in regard to her assertion that the landlord's onsite manager harassed her daughter, she provided no corroborating evidence from her daughter, such as an affidavit or participation in this hearing as a witness.

In some incidents, the tenant's submissions were not supported by her documentary evidence. For example, in relation to her claim that the security cameras were changed to be directed at her unit specifically after she had a disagreement with the onsite manager, she provided no evidence that the camera had previously been pointed away from her unit.

In addition, the tenant expects that the landlord's only option, in regard to DG is to end his tenancy, because he has breached material terms of his tenancy agreement. However, the tenant has provided no evidence that she has seen DG's tenancy agreement; as such, I find that she cannot assert that DG has breached any material term of his tenancy agreement.

While I accept that the landlord may have been remiss in not closing the loop with the tenant to follow up with her after he has taken whatever action he took in regard to her complaints; she has provided no evidence, at all, that any of the activity attributed to DG that she complained about in August 2020 or February 2021 has continued.

I am satisfied that the landlord has provided reasonable responses to the tenant's complaints over all and as noted above, he has not been provided with any further complaints than the ones that he has addressed.

I find the tenant has failed to establish that she had been singled out by the landlord in regard to the issue of storage in common areas for any other reason than she had stored her paddleboards contrary to the terms of her tenancy. If she had been the only one or only one of a few tenants who had to respond to this issue, it is likely that she could have provided such evidence by having fellow occupants of the residential property provide affidavits and/or participatory testimony as witnesses in support.

Conclusion

Based on the above, I dismiss the tenant's Application for Dispute Resolution, in its entirety and without leave to reapply.

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: February 16, 2022

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Residential Tenancy Branch