



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Affordable Housing Charitable  
Association and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement.

The hearing was conducted via teleconference and was attended by the tenant and an agent for the landlord.

While both parties had served each other evidence in accordance to the requirements set forth in the Residential Tenancy Branch Rules of Procedure, the tenant served the landlord with one package of evidence two days before this hearing. I note that this evidence was primarily a restatement of his original claim and resorted of a number of pieces of his evidence, but that it also included some new pieces of evidence. The landlord did not object to consideration of the tenant's late evidence.

At the outset of the hearing, I clarified that the respondent named on the tenant's Application for Dispute Resolution was an agent for the landlord. I amend the tenant's Application to name the landlord named in the tenancy agreement and not the landlord's 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 their obligations under the *Act*, regulation or tenancy agreement, pursuant to Section 62 of the *Act*.

### Background and Evidence

Both parties submitted into evidence a copy of a tenancy agreement signed by the parties on November 18, 2015 for a month to month tenancy beginning on December 1, 2015 for a monthly rent of \$1,000.00 due on the 1<sup>st</sup> of each month with a security deposit of \$300.00 paid.

The tenant submits that the landlord has failed to deal with the occupant of the rental unit above the tenant's and that the occupant has been bullying and harassing him since August 2020.

The tenant submits that he can't make any noises in his rental unit at any time of day or night and more specifically between the hours of 12:00 noon to 1:00 p.m.; 5:00 p.m. to 6:00 p.m.; and 12:00 a.m. to 7:00 p.m. he cannot make any bodily function noises such as sneezing; coughing; urinating; defecating; or flatulence.

The tenant submits if he makes any noises at all then the occupant of the unit above him engages in what the tenant calls "noise rage". He states that when she is disturbed by the slightest of noises coming from his unit, she makes noises in her own unit all night and the tenant cannot sleep. He states that the occupant above will drop heavy objects all night to ensure he cannot sleep, despite wearing headphones and earplugs.

The tenant testified that it has gotten so bad that he no longer sleeps in his bedroom but rather on a mattress on the floor of his living room in order to try and not have her hear his snoring or other bodily noises during the night. The tenant also submits that since he has reported his complaint to the landlord and the landlord spoke with the occupant above she has increased her bullying and harassment.

In support of his claim the tenant has submitted copies of recordings he has made at all hours of the day and night, primarily overnight where he identifies that he has made a bodily function noise and then the occupant above causes a heavy item to drop on her floor (his ceiling). The tenant has also submitted a written diary recording events.

The landlord submits that they have investigated the tenant's claims and listened to his recordings but that they cannot determine that the occupant above the tenant is doing anything that would cause the disturbances the tenant is asserting. However, the landlord did write a letter to the occupant advise her they had received a complaint that she needs to try to minimize the noise issues.

The landlord acknowledges that the occupant in the unit above is elderly, as are all the residents in this residential property and that she has a hearing impairment, so she may have her television on loudly and may not realize that her actions are causing any disturbances.

The tenant also asserts the occupant above him has sent him Christmas and Valentine cards that he finds disturbing as he finds it to be part of her bullying campaign against him. The landlord submits that these cards were provided by a charity to all residents of the residential property.

During the hearing the parties discussed the possibility of the tenant moving into another rental unit. The landlord said that they would have one coming available on the first floor. The tenant suggested he would prefer one on the top floor. Nonetheless the

parties did agreed that they would investigate the possibility of a move for the tenant after the hearing.

### Analysis

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.

Despite the submission of an extensive number of recordings, I find the quality of the recordings does not provide sufficient evidence of noise disturbances coming from another rental unit. Furthermore, even if the recordings provided evidence to support the tenant's claims, they do not provide evidence that the occupant above is doing anything deliberately to harass or bully the tenant.

I am not satisfied that the tenant's evidence shows that the Christmas and Valentine's cards were sent by the occupant above him. Rather I prefer the landlord's evidence on this point that the cards were sent as part of a local charity senior's project.

In addition, I find that the landlord has taken reasonable steps to investigate the tenant's complaints and that they too have determined that they cannot establish that the occupant above the tenant has caused any disturbances, either deliberate or unintentionally. Despite their findings the landlord still provided a written warning to the occupant above to be more respectful of her surrounding tenants in her activities.

I find all of these steps taken by the landlord show the landlord has been compliant with their obligations under Section 28 of the *Act*. I also recognize, that the landlord is still willing to find alternate resolutions for the tenant, such as moving the tenant to a new rental unit that may be more suitable to the tenant's needs.

Conclusion

For the reasons noted above, I dismiss the tenant's Application for Dispute Resolution, 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: March 22, 2022

---

Residential Tenancy Branch