



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC, FFT

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The tenant was also accompanied by a support person, who did not testify or take part in the hearing. The tenant also called 2 witnesses, and the landlord called 1 witness, all of whom also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or the tenancy agreement, specifically with respect to quiet enjoyment of the rental unit?

### Background and Evidence

#### TENANT'S EVIDENCE:

**The tenant** testified that this month-to-month tenancy began 10 ½ years ago and the tenant still resides in the rental unit. Rent in the amount of \$769.00 is currently payable

on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit in the amount of \$325.00 as well as a pet damage deposit in the amount of \$325.00, both of which are currently still held in trust by the landlord. The rental unit is an apartment in a complex containing 17 units, and the landlord does not reside on the rental property.

For well over 2 years a dog has been barking 7 or 8 hours per day, 5 days per week. The tenant told the landlord about it, and started putting everything on paper since the landlord tried to evict the tenant. In February, 2021 the co-landlord told the tenant that the dog would be locked in a bedroom with a bark collar so that it wouldn't have the run of the apartment. The tenant also got by-law services involved, who spoke with the landlord, but said it is a landlord/tenant situation. However the dog barks anywhere from 80 to 90 barks per minute, which adds up to about 30,000 barks per day. The landlord has never taken the time to go to the tenant's rental unit to listen. The tenant believes the dog belongs to another tenant upstairs. The co-landlord said he didn't want to be the bad person to tell them about their dog.

The tenant works doing snow removal in the winter and goes to work at 4:00 or 5:00 a.m. and then can't get back to sleep when he returns around 8:30 or 9:00 a.m.

**The tenant's first witness** (LR) testified that he resides in a unit next door to the tenant. The witness was in hospital and has lost weight, and when he got out of hospital he couldn't sleep because of the dog barking, like a cougar hound and won't be quiet. The dog has been more than a nuisance, right above the witness' unit, and right above his pillow. The landlord told the witness that it was temporary, and then said that if the witness bitched, he would be evicted. The witness is just about 80 years old and does not want to play games with the landlord.

The witness has been served with a notice to end the tenancy and Arbitration is coming up on the 8<sup>th</sup> of April.

**The tenant's second witness** (TR) testified that she is the wife of the first witness and lives next door to the tenant. When home, all the witness hears is a dog upstairs barking from morning till night. The witness and spouse are in their 70's and her husband is not well. The dog causes the witness stress, and they can't rest.

The witness has lived in the rental complex since March, 2021.

The witness was also questioned about going out during the day, to which she replied that they do go out for coffee and to visit with friends.

## LANDLORD'S EVIDENCE:

**The landlord** testified that another tenant moved into a rental unit above this tenant's unit on May 5, 2018 with a dog and a child, and has had another child since. About 2 years ago the tenant asked to move into that person's rental unit when it becomes vacant. Shortly after that, the tenant started complaining about her small kids making noise. The floors are cement and have carpet underlay. The tenant in that unit has had to call police.

When the tenant couldn't do anything about the kids, now he complains about the dog. The tenant has been served with 2 eviction notices due to his rotten behaviour, spit on the landlord's truck, is very rude and people are tired of it. The first eviction notice was set aside because the landlord had not given enough warning letters. For the second hearing, the Arbitrator couldn't access all of the evidence, so it wasn't considered.

The landlord has purchased a plug-in device, which a veterinarian said has a calming effect on dogs. The landlord went to see 2 veterinarians who said that someone is causing anxiety problems. When the tenant who owns the dog goes to work, the dog runs loose in the apartment, and when someone knocks on a door or hears the landlords working, the dog barks. The landlord disputes telling the tenant that a bark collar was purchased, and the dog does not bark 8 hours per day.

The landlord asked the tenant who owns the dog if the dog can go into the bedroom while she is at work.

The landlord completed an inspection on the tenant's rental unit and discovered dents in the ceiling and a hole right through the ceiling, obviously from a broom handle, and now the landlord knows why the dog upstairs has been raising hell.

The tenant also called SPCA and by-law and the Mayor, and then accused all of them of not doing their job. There is nothing wrong with the dog. The tenant also has a dog that barks at the co-landlord.

When the landlords started to manage the building 10 years ago, the tenant lived on the top floor and had a cat. Then he moved into another unit and got a dog, but dogs were not allowed. The landlord wanted the tenant to sign another tenancy agreement, but the tenant refused, however his current tenancy agreement states he can only have a cat. The landlord got permission from the owner to allow dogs.

The landlord asked the tenant how he would feel if the dog was put down, and the tenant said he didn't care and the kids should be put down too.

The landlords don't bother anymore, this has been going on too long, and there's no point talking to the tenant. The dog barks when someone bangs, and if the tenant would stop putting holes in the ceilings, that would be helpful.

**The Co-Landlord** testified that the tenant who owns the dog moved in 6 years ago with the dog and no complaints were made for 4 years until this tenant decided to move into a new apartment overlooking the property.

The landlords do not rent places with holes in the ceilings, and there is clearly a broom hole in the tenant's ceiling. The co-landlord believes the tenant has been banging due to small kids playing and that gets the dog barking. The tenant would go to that apartment and yell about the kids and the dog starts barking. The veterinarian said that the dog has anxiety now due to the noise that was suddenly started by the tenant. The dog thinks someone is coming to his unit.

The co-landlord paid \$80.00 for aroma therapy as recommended by the veterinarian, but can't continue to do that each time the tenant has a fit. The tenant states that he spoke to the co-landlord about a bark collar, and the co-landlord said it wasn't, but a person can't talk to the tenant; he just yells and yells.

**The landlord's witness** (JS) testified that she lives in the complex on the same floor as the dog, and has provided a letter for this hearing.

The witness has seen the tenant banging on the door of the tenant who owns the dog. Banging on doors also gets the witness' dog scared and there is no reason to bang that hard. The witness told the landlords about it, and is tired of this; over and over. The witness hasn't spoken to the tenant for 3 or 4 months, choosing not to interact with the tenant.

### Analysis

I have reviewed all of the evidence, including the text message from the tenant using profane and disturbing language.

The landlord has also provided a copy of a Decision dated November 18, 2020, which states, in part: "...I find that the Tenant's behaviour was very inappropriate. The tenant is cautioned that his behaviour of yelling or banging on doors or ceilings of neighbours

is not appropriate and any further behavior that disturbs other occupants, may result in the Landlord issuing a One Month Notice to End Tenancy for Cause that may be found to be sufficient to justify ending this tenancy.”

Considering the testimony and the evidence of the parties in this case, I agree with those findings.

I also accept the undisputed testimony of the landlord that the tenant’s rental unit has dents in the ceiling that were not there prior to this tenancy, and that they are indicative of the tenant hitting a broom handle on the ceiling, one of which has left a hole.

In the circumstances, I find that the tenant has created his own loss of quiet enjoyment, and the tenant’s application is dismissed without leave to reapply.

### Conclusion

For the reasons set out above, the tenant’s application is hereby dismissed in its entirety 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: March 28, 2022

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Residential Tenancy Branch