# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes:

OLC, CNC, CNR, MNDCT, FFT

Introduction:

A hearing was convened on April 29, 2021 in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied for an Order requiring the Landlord to comply with the *Residential Tenancy Act (Act*) and/or the tenancy agreement and to recover the fee for filing this Application for Dispute Resolution. The Tenant subsequently amended the Application for Dispute Resolution in which he applied to cancel a One Month Notice to End Tenancy for Cause, to cancel a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, for an Order requiring the Landlord to make repairs, and for a monetary Order for money owed or compensation for damage or loss.

As outlined in my interim decision of April 29, 2021, the parties reached a settlement agreement, in which the parties agreed, in part, that the only issue to be determined by me at these proceedings is whether the Tenant is entitled to compensation for loss of quiet enjoyment.

There was insufficient time to conclude the hearing on April 29, 2021 and that hearing was adjourned. The hearing was reconvened on April 05, 2022 and was concluded on that date.

The hearing on April 05, 2022 was scheduled to commence at 9:30 a.m. The Tenant attended the hearing at the scheduled start time. The hearing on April 05, 2022 proceeded in the absence of the Landlord. By the time the teleconference was terminated at 10:12 a.m., the Landlord had not appeared.

Service of documents was addressed in my interim decision of April 29, 2021 and will not be restated here, except to say that all evidence submitted by the parties has been accepted.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. At the first hearing each participant, with the exception of legal counsel, affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings. At the second hearing the Tenant was reminded that he was giving affirmed testimony.

At the first hearing the participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings**.** At the first hearing each participant confirmed they would not record any portion of these proceedings. At the second hearing the participants were reminded that recording was not permitted.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence provided on April 29, 2021:

The Landlord and the Tenant agree that:

- The tenancy began on October 01, 2019, although the Tenant moved in shortly prior to the official start date;
- The current monthly rent is $1,360.00; and
- The rental unit has been vacated.

The Tenant is seeking compensation of $8,160.00, which is the equivalent of six month's rent.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- On February 01, 2021 he was "accosted" by the Agents for the Landlord;
- They were yelling at him;
- He drove away from the property;
- The female Agent for the Landlord prevented his friend from driving away from the property by standing in front of his friend's vehicle;
- Neither Agent for the Landlord was wearing a mask;
- The male Agent for the Landlord opened the door of his friend's vehicle;
- He contacted the RCMP;
- The RCMP responded to the report but no charges were laid;
- He was served with a letter to end tenancy on this date; and

- Part of the interaction that occurred on this date were recorded in videos #26 and #27.

In regard to the incident on February 01, 2021, the female Agent for the Landlord stated that:

- She and the male Agent for the Landlord were trying to serve the Tenant with a notice to end tenancy;
- The Tenant drove away from the property so they were not able to serve him with a letter to end tenancy on that date;
- She stood in front of the friend's vehicle;
- The male Agent for the Landlord opened the door of the friend's vehicle and told the friend they wanted the Tenant to return to the property;
- When the police attended, they assisted the Landlord in serving the letter to end tenancy to the Tenant.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- He was provided with sole use of the storage area as part of the tenancy agreement;
- The storage area can be accessed through a door that leads to his rental unit and a door that leads to the Landlord's business;
- He blocked the door that leads to the storage area from the Landlord's business area, as he is unable to lock it to prevent the Landlord from accessing the storage area; and
- The Landlord has property in the storage area which the Tenant allowed them to leave in the area.

In regard to the storage area, the female Agent for the Landlord state that:

- There is storage area that can be accessed through a door that leads to his rental unit and an exterior door that leads to the Landlord's business;
- The Tenant was given permission to use this storage area as a term of the tenancy;
- The Tenant was told the Landlord would share this storage area;
- The Landlord has property stored in the storage area; and
- On February 02, 2021 the Tenant blocked the Landlord's access to the storage area.

A note, dated February 01, 2021, was submitted in evidence, in which the Tenant asks the Landlord to remove their personal property from the storage and to install a deadbolt.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- On February 02, 2021 the Landlord turned off the power to his hallway and his storage area;
- On February 03, 2021 he left a note on the Landlord's door asking them to

restore power to the unit;
- He contacted the RCMP, who did not assist him;
- The power to those areas was not restored prior to him vacating the unit;
- He does not have access to the breaker that controls the power in his hallway and the storage area;
- He speculates the Landlord has turned off the breaker that provides access to these areas;
- The lack of power in his entry and storage area was dangerous;
- There is a window in the storage area, which he has blocked for security reasons;
- The lack of power in the storage area prevents him from “tinkering” in that area; and
- Even if the window in the storage area was not blocked, he would not be able to tinker in that area when it is dark outside.

In regard to the incident on February 02, 2021, the female Agent for the Landlord stated that:
- The Landlord did not turn off the power to any portion of the rental unit or the storage area;
- If there was no light in his entry, perhaps the lightbulb is burned out;
- They received the note the Tenant left on their door on February 03, 2021in regards to power;
- They did not respond to the note because they saw there was power in the unit and they thought he was “lying”;
- They could not check to see if there was power in the storage area below the rental unit, as the Tenant had blocked the Landlord’s access to that area; and
- It is possible the light bulb in the storage area was also burned out.

The Tenant submitted videos that show the light switch does not activate the light in his stairwell, the emergency power light is not activated in his stairwell, and the light in the storage area does not activate with activity, as it is normally does.

A copy of the notice that the Tenant posted on the door on February 03, 2021 was submitted in evidence.

Background and Evidence provided on April 05, 2022:

The power was not restored to his hallway and storage area by the time he vacated the unit on June 30, 2021.

There is an emergency light in the stairwell, which came on shortly after the power was turned off on February 02, 2021. This emergency light stopped working after a day or

two, which he believes was because the battery died on the emergency light. He did not change the bulb in the storage area to determine if a light bulb had burned out.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- The business below the rental unit makes custom gutter products;
- One of the tools used in the business on the lower level is a “punch press”;
- The “punch press” can be heard in videos submitted in evidence by the Tenant;
- Prior to October 15, 2020 the “punch press” was not used during early morning or late evening hours;
- After October 15, 2020 the “punch press” was operated on an almost daily basis at 6:30 or 6:45 a.m.;
- He has a camera in his rental unit that indicates that the “punch press’ was typically shut off within 10 minutes of the Tenant leaving his rental unit in the morning;
- He complained about the noise from the “punch press” to the Agent for the Landlord with the initials “HN”, but the noise continued;
- Beginning in February of 2021, a compressor was constantly running in the rental unit, albeit it runs intermittently as it builds and loses air pressure; and
- The noise disturbances lasted until he vacated the unit on June 30, 2021.

The Tenant submitted a copy of at least two messages sent to the Landlord, one of which was a text message sent to the female Agent for the Landlord on March 02, 2021, in which the Tenant mentions that the compressor has been left on.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- In February of 2021 the Landlord told the Tenant his mail could no longer be delivered to the business below the rental unit;
- At least one UPS delivery for the Tenant was refused by the female Agent for the Landlord; and
- He had to obtain a post box for his mailing address.

The Tenant submitted a notice, dated February 02, 2021, which informs him his mail can no longer be delivered to the business office below the unit.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- An agent for the Landlord contacted his employer and falsely reported that the Tenant had attempted to hit him with a tow truck belonging to the Tenant’s employer;
- The agent for the Landlord told his employer that the incident occurred on April 01, 2021;
- The accusation was false; and
- His employer concluded that the accusation was false.

In support of the claim for loss of quiet enjoyment, the Tenant stated that:

- He knows the Landlord entered his storage area without permission because he placed a piece of tape over the door leading from the Landlord's business to the storage area and the tape was disturbed;
- He knows the Landlord entered his rental unit because his dog's paws were injured and the only way that could have occurred is if someone opened his front door without first alerting the dog, as the dog typically sleeps in front of the door.

In support of the claim for loss of quiet enjoyment, the Tenant stated that the female Agent for the Landlord threatened to harm his dog. The Articling Student referred me to video evidence 25, 26, and 44 to support this submission.

In support of the claim for loss of quiet enjoyment, the Tenant stated that the agents for the Landlord have told him he is not allowed to have guests in the rental unit and they repeatedly confronted his guests. He stated that as a result of this conflict he told his friends not to visit him at the rental unit.

In support of the claim for loss of quiet enjoyment, the Tenant stated that he has always paid his rent in cash and he has never been provided with rent receipts, in spite of the female Agent for the Landlord's promise to provide them.

The Tenant stated that he left his job on September 20, 2021 because of the stress created by this tenancy. He stated that as a result of the stress and loss of sleep he was performing poorly at this job, which caused him and his employer to agree that this employment should end.

Analysis:

Section 28 of the *Act* grants tenants the right to quiet enjoyment including, but not limited to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 of the *Act*; and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

> 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. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

After considering the testimony of the parties regarding the interaction on February 01, 2021 and viewing the associated video evidence, I find that the incident does not warrant compensation for loss of quiet enjoyment. I find that the Agents for the Landlord were attempting to personally serve the Tenant with a notice to end tenancy, which they have the legal right to do. I find that the Tenant actively prevented the service of the document, which led to an interaction between the Agents for the Landlord and the Tenant's friend.

While I do not condone the interaction the Agents for the Landlord had with the Tenant's friend, the Tenant must accept some of the responsibility for that interaction, as he was avoiding being served with a legal document. Section 7(2) of the *Act* stipulates, in part, that a tenant who claims compensation for damage or loss that results from a landlord's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the interaction between the Agents for the Landlord and his friend would not have occurred if the Tenant had spoken with the agents on this occasion.

On the basis of the undisputed evidence, I find there is a storage area on the floor below the rental unit; that this area can be accessed through a door leading into the rental unit and through a door leading into the Landlord's business; and that the Tenant was permitted to use this storage area as a term of his tenancy.

In the case of verbal testimony when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden. As this is the Tenant's claim for compensation, the Tenant bears the burden of proving that he is entitled to compensation for loss of quiet enjoyment, in part, because he was denied sole use of this storage area.

I find that the Tenant has submitted insufficient evidence to establish that he had sole use of the storage area. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that he had sole use of the area and that he allowed the Landlord to share the space or that refutes the female Agent for the Landlord's testimony that it was a shared storage space.

In *Bray Holdings Ltd. v. Black* BCSC 738, Victoria Registry, 001815, 3 May, 2000, the court quoted with approval the following from *Faryna v. Chorny* (1951-52), W.W.R. (N.S.) 171 (B.C.C.A.) at p.174:

> *The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the current existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

In the circumstances before me, I find the Landlord's submission that the storage area was a shared space is more likely than the version of events provided by the Tenant. In reaching this conclusion I was influenced, in part, by the fact there is a door that provides the Landlord with access to the area and there is a door that provides the Tenant with access to the area. This configuration suggestions the area was designed for shared use. I was further influenced by the undisputed evidence that both parties were storing items in the area, which supports the conclusion it has always been a shared space.

As the Tenant has failed to establish that he had the right to the sole use of the storage area, I find he is not entitled to any compensation related to the Landlord having access to that area.

On the basis of the testimony of the Tenant and in the absence of evidence to the contrary, I find that the Tenant was without power in the hallway and storage area between February 02, 2021 and June 30, 2021, which was when he vacated the unit. I find that this was a breach of his right to the quiet enjoyment of the rental unit.

Even if the Landlord did not intentionally terminate the power in the hallway and storage, as the Tenant contends, I find that the Landlord breached the Tenant's right to quiet enjoyment by failing to ensure that the electricity in those areas was functioning properly.

On the basis of the undisputed evidence, I find that the Tenant informed the Landlord of the problem on February 03, 2021 when he posted a notice on the Landlord's door. On the basis of the testimony of the female Agent for the Landlord, I find that the Landlord did not investigate this report, as they believed the report was false. By failing to respond to the report and ensuring that the power had not somehow been terminated, I find that the Landlord breached the Tenant's right to quiet enjoyment of the rental unit.

While I accept the Landlord's evidence that they could not check to see if there was power in the storage area because the Tenant had blocked their access to that area, I find that the Landlord had an obligation to at least make an appointment with the Tenant to jointly view the area with him.

I find that the Tenant is entitled to compensation for being without power in his storage area and hallway for four months in an amount that is equivalent to 40% of one month's rent, which equates to a 10% monthly rent reduction for four months. In determining that greater compensation is not warranted, I was influenced by the undisputed evidence that the Tenant blocked the Landlord's access to the shared storage area, which made it more difficult for the Landlord to assess the situation and likely made the Landlord less inclined to do so. I calculate 40% of one month's rent to be $544.00.

On the basis of the undisputed evidence, I find that the Tenant's right to quiet enjoyment of the rental unit was breached between October 15, 2020 and the end of the tenancy on June 30, 2021 as a result of the "punch press" being used on an almost daily basis in the early morning hours. I find his testimony is strongly supported by video evidence submitted by the Tenant.

Even if the Landlord was not intentionally attempting to disturb the Tenant with the "punch press", I find that the Landlord should have known using a noisy machine at that

time in the morning would be disruptive. I find it likely that the Landlord did know the noise would be disruptive, given that the machine was not used in the early morning hours prior to October 15, 2020.

I find that the Tenant is entitled to compensation for noise disturbances from the “punch press” for approximately 8 months in an amount that is equivalent to 80% of one month’s rent, which equates to a 10% monthly rent reduction for eight months. In determining that greater compensation is not warranted, I was influenced by the evidence that this typically occurred for a short period in the morning. I calculate 80% of one month’s rent to be $1,088.00.

On the basis of the undisputed evidence, I find that the Tenant’s right to quiet enjoyment of the rental unit was breached from February of 2021 until the ended on June 30, 2021 when a compressor ran continuously, even though a compressor is only intermittently noisy. Even if the Landlord was not intentionally attempting to disturb the Tenant, I find that the Landlord should have known that a compressor running during the evening would be disruptive.

I find that the Tenant is entitled to compensation for noise disturbances from the compressor for approximately 5 months in an amount that is equivalent to 100% of one month’s rent, which equates to a 20% monthly rent reduction for five months. I find this disturbance would be quite significant, particularly during the night. I calculate 100% of one month’s rent to be $1,360.00.

On the basis of the undisputed evidence, I find that on February 02, 2021 the Landlord informed the Tenant that he could not longer have his mail delivered to the business office below the unit.

Section 27(2) of the *Act* permits a landlord to terminate a service or facility that is not a material term of the tenancy agreement or essential to the use of the rental unit as living accommodation only if the Landlord gives 30 days' written notice, in the approved form, of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility. Mail service is not a service or facility, as that term is defined by the *Act*, so section 27(2) of the *Act* does not apply in these circumstances. As the *Act* does not prevent the Landlord from withdrawing this service that had been provided to the Tenant, I cannot conclude that the Tenant is entitled to compensation pursuant to section 27(2) of the *Act* and I cannot conclude that withdrawing that service breached the Tenant’s right to quiet enjoyment.

On the basis of the undisputed evidence, I find that an agent for the Landlord contacted the Tenant's employer and falsely reported that on April 01, 2021 the Tenant had attempted to hit the agent with a tow truck belonging to the Tenant's employer. Although the Tenant's employer subsequently concluded that the accusation was false, I find that the accusation would disturb most reasonable people.

I find it reasonable to conclude that the false accusation was made in an effort to intimidate or harass the Tenant as a result of the on-going conflict with the tenancy. I therefore find that the false report constitutes a serious breach of the Tenant's right to quiet enjoyment. I therefore find that the Tenant is entitled to compensation of $500.00 for this breach.

On the basis of the undisputed evidence, I find that the Landlord, or someone acting on behalf of the Landlord, entered the storage area below the rental unit without informing the Tenant of the entry. As previously stated, I have concluded that this is a shared storage area and I cannot, therefore, conclude that the Landlord was required to provide the Tenant with notice of an entry. I therefore cannot conclude that the Tenant is entitled to compensation as a result of this entry.

I find that the Tenant has submitted insufficient evidence to establish that the Landlord or someone acting on behalf of the Landlord, entered the rental unit without proper authority. I find his conclusion that someone entered the unit because his dog's paws were injured by the door being opened is highly speculative. Without clear evidence that the Landlord entered the rental unit without authority, I cannot conclude that the Tenant is entitled to compensation as a result of an unlawful entry.

I find that the Tenant has submitted insufficient evidence to establish that the female Agent for the Landlord threatened to harm his dog. I was able to locate documents in which the female Agent for the Landlord declared that the Tenant's dog was a nuisance and that the dog should be leashed or the Tenant "will regret it" or the tenancy will end. While the Agent for the Landlord has used less than professional wording in those messages, I find they should be considered "warnings" rather than threats and that compensation is not warranted.

I find that video evidence 25, 26, and 44 which was referenced by the Articling Student does not support the submission that the Tenant's dog was threatened. Although there are some inappropriate communications in those videos, the Landlord's representatives do not threaten the Tenant's dog in the videos. I find the comments in the videos and

are also more akin to "warnings" rather than threats. I find they are merely examples of the acrimonious relationship between the parties and that compensation is not warranted.

On the basis of the undisputed testimony of the Tenant, I find that the Landlord seriously breached the Tenant's right to quiet enjoyment of the rental unit by telling him he could not have guests and by confronting his guests. I find that the Tenant is entitled to compensation of $1,000.00 for this breach.

On the basis of the undisputed testimony of the Tenant, I find that the Tenant always paid his rent in cash and was never provided with rent receipts, in spite of the female Agent for the Landlord's promise to provide them. While I find this to be a breach of section 26(2) of the Act, I cannot conclude that it is a breach of the Tenant's right to quiet enjoyment. If this was an issue that truly bothered the Tenant, the Tenant should have filed an Application for Dispute Resolution seeking an Order requiring rent receipts long before this tenancy began to deteriorate. Compensation is not being awarded in regard to failure to provide rent receipts.

Given the nature of claims for breach of quiet enjoyment, awarding compensation for a breach of quiet enjoyment is highly subjective. In awarding compensation, I have considered the impact the stress of the tenancy has had on the Tenant, including his submission that the stress contributed to the loss of his employment.

In awarding compensation, I also considered my conclusion that the Tenant intentionally blocked the Landlord's access to a shared storage area and intentionally avoided service of a legal document on February 01, 2021. I find that his actions likely contributed to the acrimonious relations between the parties and by doing so, he failed to mitigate the breach of his right to quiet enjoyment.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of $4,592.00, which includes $4,492.00 for loss of quiet enjoyment and $100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: April 06, 2022

Residential Tenancy Branch