



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on July 20, 2022. The Tenant applied for the following relief, pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulation), and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord attended the hearing and was accompanied by MM, his spouse, and TR, a witness. The Landlord was represented by VR, legal counsel. All those giving testimony provided a solemn affirmation at the beginning of the hearing.

The Tenant testified that the Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on August 8, 2022. The Landlord acknowledged receipt.

The Landlord testified the documentary evidence upon which he intended to rely was served on the Tenant by registered mail on August 26, 2022. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents during the hearing. The parties were in attendance or were represented and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given a full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

1. Is the Tenant entitled to an order that the Landlord comply with the Act, the Regulation, and/or the tenancy agreement?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

The parties agreed the tenancy began on May 15, 2021. Rent of \$1,550.00 per month is due on or before the 25<sup>th</sup> day of each month. The parties agreed the Tenant paid a security deposit of \$775.00, which the Landlord holds. A copy of the tenancy agreement between the parties was submitted into evidence.

The Tenant advised that she is seeking an order requiring the Landlord to evict the other tenants residing in the upper unit and an order requiring the Landlord to install soundproofing. The Tenant is also requesting the return of filing fee, the cost of serving the Landlord by registered mail, and the cost of a USB stick used to provide evidence to the Landlord.

The Tenant testified that the Landlord purchased the rental property in April 2022, at which time there had already been discussions with the previous landlord about noise from the upper unit.

The Tenant testified that she lives in the lower unit with her fiancée, and that the other tenants moved into the upper unit on July 9, 2022. The Tenant testified that the other tenants make an unreasonable amount of noise that is persistent and disruptive. The Tenant testified that the noise travels primarily through the stairwell, which is exposed in the Tenant's unit. A photograph of the space under the stairwell was submitted in support.

The Tenant testified that on or about May 10, 2022, the Landlord indicated he would install soundproofing. The Tenant stated the ceilings in her rental unit are 9 feet high and would accommodate it. The Tenant stated that although the Landlord had two contractors attend, no action has been taken. The Tenant asserted that the house is not structurally sound and that she and the upper tenants can hear each other word for word. The Tenant testified that the lack of privacy violates an ethical duty related to her occupation.

The Tenant started recording noise from the other tenants as soon as they moved in on July 9, 2022. The Tenant submitted audio recordings of banging noises and creaking floors from the other tenants' unit. The Tenant also provided a recording of what she referred to noise from a domestic dispute on July 11, 2022, which left the elder in the other unit wailing. In another recording on the same date an individual can be heard warning the elder that "they will kill you" although the nature of the threat is unclear. Additional recordings of noise from the other tenants' unit were submitted.

The Tenant testified that the noise continued and that on July 12, 2022, banging noises from the other tenants' unit caused her fiancée to have to move his office into his son's bedroom. A recording was submitted in support. The Tenant testified that the noise continued and that on July 20, 2022, her partner had to stay in a hotel.

The Tenant testified that she has tried speaking to the other tenants with no success. In a video taken on July 25, 2022, the Tenant can be heard asking an occupant of the upper unit if they could talk about the noise in the house. The upper tenant immediately says they are not making noise, that they are living normally, and that they are prepared to go to court.

The Tenant testified the police have been called and attended three times. She also testified that the Landlord has been advised of the situation on numerous occasions but that he refuses to do anything about it. The Tenant submitted a screen print of a text message from the Landlord in response to a video sent to him by the Tenant. In it, the Landlord acknowledges the other tenants' behaviour is "absolutely not acceptable" and says he will "follow up with them again."

The Tenant testified that despite the attendance of police and the Landlord's warnings, the other tenants' behaviour has not changed. The Tenant referred to additional videos and audio recordings from July 25 to August 5, 2022.

VR made submissions on behalf of the Landlord. He acknowledged the rental property was purchased by the Landlord in April 2022 and that the Landlord inherited the tenancy situation. VR advised that both the Tenant and the upper tenants have made repeated claims about each other, and that the Landlord has tried to balance the complaints reasonably. VR advised that all complaints were considered and that the offending parties were advised of the complaint and were asked to change their behaviour.

With respect to soundproofing, VR advised that the Landlord looked into soundproofing in May and June 2022, and that an inspector said it is not required. However, the Landlord looked into soundproofing further and discovered that no contractor was available until September 2022. VR also noted that the Landlord was advised that soundproofing would require demolition, wall removal, and electrical work, all of which would require the Tenant's rental unit to be vacant.

VR stated that the Tenant's complaints and demands for the Landlord to evict the upper tenants started as soon as they moved in. VR acknowledged that the upper tenants were noisy when they moved in but attributed this to a stressful former tenancy. VR submitted that the noises heard by the Tenant are not particularly loud and are primarily sounds of daily living. VR submitted that the Tenant is not entitled to absolute quiet.

VR also advised that the Tenant and her fiancée play loud music and have made threats toward the upper tenants. He suggested the Tenant is merely used to having house to herself and does not want any tenants above, which the Tenant denied. VR also indicated that the upper tenants have been more responsive to complaints and the Tenant. Specifically, VR advised that the upper tenants have put down padding and carpet to reduce noise.

VR stated that the Landlord is not attempting to evict the upper tenants and has acted reasonably. The Landlord has received and responded to complaints without taking sides and has even looked into soundproofing as an option.

TR, an occupant of the upper unit, was called upon to give testimony in response to the Tenant's claim. TR testified that he felt there was a "campaign" to remove the upper tenants as soon as they moved in. He acknowledged that the move-in was noisy and described it as a "traumatic" day in light of his family's previous living circumstances. He also acknowledged that his mother cried as an emotional release when they moved in.

TR also testified that the upper tenants tried many ways to reduce the sound including adding carpet and rugs, changing his mother's walker, and even going out for the day. He stated that neither the Tenant nor her fiancée ever appeared to be interested in getting to know them

VR submitted that the Tenant's application should be dismissed without leave to reapply.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 62(3) of the Act confirms the director may make any order necessary to give effect to the rights, obligations and prohibitions under the Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.

In this case, the Tenant sought orders requiring the Landlord to evict the upper tenants and/or to install soundproofing.

With respect to the Tenant's request for an order that the Landlord evict the upper tenants, section 28 of the Act confirms that tenants are entitled to quiet enjoyment including, but not limited to, a right to be free from unreasonable disturbance. In this case, I find that the noise from the tenants in the upper unit is substantial and unreasonable. Audio and video recordings confirming the extent of the disruption were submitted in support. Despite the testimony of TR, the recordings satisfy me that the upper tenants have continued to demonstrate a lack of willingness to alter their behaviour to reduce noise in the Tenant's rental unit. I also accept that the Landlord has taken some steps to address the Tenant's complaints. However, I the Landlord has not taken all reasonable steps to correct the noise emanating from the other tenants' unit.

Considering the above, I order the Landlord to take all steps permitted under the Act to ensure the Tenant's right to quiet enjoyment is protected, which may include issuing a One Month Notice to End Tenancy for Cause under section 47 of the Act.

With respect to the Tenant's request for an order that the Landlord install soundproofing in the rental unit, section 32 of the Act obligates a landlord to "provide and maintain residential property in a state of decoration and repair that...complies with the health, safety and housing standards required by law, and...having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant." In this case, I find there is insufficient evidence before me to conclude the rental property does not comply with health, safety, and housing standards, or is otherwise not suitable for occupation. While I accept that the noise from the other tenants' unit has been disruptive, I find this does not place upon the Landlord an obligation to incur the expense of installing soundproofing.

Considering the above, I find that the Tenant's request for an order that the Landlord install soundproofing is dismissed without leave to reapply.

The Tenant's requests to recover the costs of serving the Landlord by registered mail and a USB stick are dismissed without leave to reapply. As these costs can be variable, they are generally borne by the parties in disputes.

As the Tenant has been partially successful, I grant a monetary award of \$100.00 in recovery of the filing fee. This amount may be deducted from a future rent payment at the Tenant's discretion.

### Conclusion

The Landlord is ordered to take all steps permitted under the Act to ensure the Tenant's right to quiet enjoyment is protected, which may include issuing a One Month Notice to End Tenancy for Cause to the upper tenants under section 47 of the Act.

The Tenant is permitted to retain \$100.00 from a future rent payment in recovery of the filing fee, at the Tenant's discretion.

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: September 14, 2022

---

Residential Tenancy Branch