



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING SOCIETIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing was scheduled to deal with a tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement.

Both parties appeared or were represented at the hearing and were affirmed.

### Preliminary and Procedural Matters

#### 1. Naming of landlord

The tenant(s) had identified an individual as the landlord. I heard that individual is the former manager for the landlord. The landlord is actually housing society and the landlord's new property manager appeared for the hearing. The Application for Dispute Resolution was amended to reflect the correct name for the landlord, as provided to me by the property manager.

#### 2. Service

I confirmed the tenant's proceeding package was sent to the landlord via registered mail and the landlord received it.

The tenants had placed all of their evidence, including a significant number of documents, photographs and recordings onto USB sticks and sent them to the landlord via registered mail on three different occasions in June 2022, August 2022 and September 2022. Each subsequent USB stick contained "updated" evidence.

The landlord's agent confirmed receipt of the three USB sticks and confirmed she was able to view their content; however, the landlord's agent indicated that it was difficult to

organize the evidence given the volume of materials that were all digitally produced and that some of the evidence appeared to be evidence from a previous hearing.

Despite the difficulty in sorting through the tenant's evidence, the landlord's agent understands the tenant's issue concerns noise from another rental unit. As such, the landlord was able to compile evidence regarding recent complaints and sent it to each tenant via registered mail on October 13, 2022. The landlord provided registered mail receipts as proof of service.

### 3. Remedies sought

The tenant stated during the hearing that he seeks monetary compensation against the landlord. I noted that the Application for Dispute Resolution does not indicate a monetary claim is being made. I noted that I see what appears to be a Monetary Order worksheet uploaded as "supporting evidence" under the remedy: "I want the landlord to comply with the Act, regulation and/or the tenancy agreement". Seeking a monetary award is a separate issue/remedy from seeking orders for compliance. I was of the view the tenant did not sufficiently identify a monetary claim as a remedy they were seeking in making this Application for Dispute Resolution. Accordingly, I informed the parties that I would not consider a monetary claim under this Application for Dispute Resolution and the tenants may make a separate Application for Dispute Resolution for such.

### 4. Is this Application for Dispute Resolution premature?

The landlord's agent pointed out that the tenant had made an oral complaint concerning noise from the tenants above the rental unit to the resident manager in May 2022 and the resident manager instructed the tenant to put the complaint in writing. The tenant provided a written complaint dated August 8, 2022 but the landlord did not receive it until late September 2022 as staff were on vacation. On October 4, 2022 the property manager responded to the tenant, in writing, asking for more details concerning the excessive noise he was complaining about and the landlord has yet to receive a response from the tenant.

The tenant acknowledged the above described sequence of events was accurate but was of the position the landlord should have acted upon his verbal complaint made in May 2022 because the parties had a previous dispute resolution proceeding in February 2022 (file number referenced on cover page of this decision) that dealt with noise complaints he had made in 2021. The tenant submitted that the Arbitrator presiding

over that case found the tenant's right to quiet enjoyment was being breached and the landlord was required to correct the situation. The tenant stated that the specific remedy he seeks is to have the tenants above him evicted.

I turned to the previous dispute resolution decision and have reproduced the Arbitrator's finding and order to the landlord:

*Therefore, I find that the Tenants have proven that their right to quiet enjoyment is being breached, per section 28 of the Act.*

*Pursuant to section 62(3) of the Act, I order the Landlord to take all reasonable measures to enforce the tenancy agreement, specifically with regards to sections 32(1) and 28 of the Act.*

Discussion ensued as to the challenges and evidence required to prove a tenant should be evicted for unreasonable disturbance of another tenant. The property manager stated that it is reasonable to request the tenant put his complaints in writing, with sufficient detail, so that landlord can take action and support an eviction notice if one is issued.

The tenant maintained that he has already provided the landlord with letters and recordings as evidence for the previous hearing. The landlord was of the position that those complaints and recordings are quite old now and would be difficult to pursue enforcement and eviction based on events that occurred many months and years ago.

Considering the evidence for the previous hearing is quite dated, I accepted the landlord's position that to evict the upstairs neighbours based on such old evidence is unlikely to be successful. As such, I find the landlord's expectation that the tenant put his complaints in writing, and with sufficient detail, so that the landlord may use the evidence in order to investigate the complaints and take appropriate action, including using the evidence in an eviction proceeding if such is warranted, to be reasonable.

The previous Arbitrator had ordered the landlord to take "reasonable" measures to enforce the tenancy agreement, and I am satisfied the landlord's request for a written complaint, with sufficient detail, is reasonable and the landlord to be compliance with the previous Arbitrator's order. That being said, upon receiving a written complaint from the tenant, with sufficient detail, the landlord will then be required to pursue investigation of the compliant and appropriate action.

The Application for Dispute Resolution before me was filed on June 14, 2022 and it was made after one oral complaint to the resident manager only. The tenant was asked to put the complaint in writing but he filed this Application for Dispute Resolution first and delayed putting the complaint in writing until August 8, 2022. The landlord has responded to that written complaint, seeking additional details from the tenant, but the tenant has not responded. Therefore, I am of the view the tenants filed this Application for Dispute Resolution prematurely.

I find it reasonable that the tenants would have put their complaint in writing, as instructed, and then if there is no response or action from the landlord, the tenants would have been in a position to pursue further remedy such as filing an Application for Dispute Resolution.

In light of the above, I dismiss this Application for Dispute Resolution with leave to reapply and I strongly encourage the parties to work together to resolve this matter, including providing written complaints with sufficient detail to the landlord and the landlord providing written responses to the tenants to acknowledge receipt of the complaint and advise of the status of the landlord's investigation into the complaint.

#### 5. Identity of Tenant(s)

In writing this decision i note that there are two tenants identified on the tenancy agreement. In filing this Application for Dispute Resolution, the individual referred to by initials DH is not listed as a tenant on the tenancy agreement. Should a subsequent Application for Dispute Resolution be filed, this discrepancy should be rectified or explained.

#### Conclusion

The Application for Dispute Resolution was filed prematurely and it is dismissed with 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: November 16, 2022

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Residential Tenancy Branch