



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Taylor Developments (Diverse Property Rentals), Diverse Property Rentals and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **OLC, FFT**

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the "Act") for:

- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Notice of Dispute Resolution Proceedings package; the tenant acknowledged service of the landlord's evidence. Neither party had issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

### Issue(s) to be Decided

Should the landlord be ordered to provide the tenant with quiet enjoyment of the rental unit?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In

accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The tenant gave the following testimony. The tenancy began on December 1, 2020. The tenant testified that this is a building she likes living in. It is quiet and easily accessible. The tenant herself is a private person who describes herself as keeping to herself and not participating in the social atmosphere of the building. According to the tenant, everybody is into each other's business, especially the manager, "T". "T" has personal information on everybody and is gossipy.

The tenant has spoken to the building manager "T" about the son of the tenant who lives directly across from her unit on the ground floor, "J". "J" was hired by "T", the building manager, to assist him in taking care of the grounds of the building. When she filed the application for dispute resolution, "J" was doing things like stomping on the stairs, running down them and making her life uncomfortable.

The tenant complained that "J" is constantly yelling in the parking lot, is vocally aggressive to her and smokes skunkweed, although she hasn't smelled it recently. "J" is frequently seen smoking near the entrance to the property near the road with some of the other building tenants. "J" is loud and social. The tenant does not like the presence of "J" constantly around. When the tenant goes for walks or to exercise, she has to pass by the front entrance where "J" may be while smoking with others, making her uncomfortable.

The tenant testified that "J"'s behaviour has changed somewhat recently. He is not as verbally aggressive towards her. He does not make as much noise when coming down the stairs, although he still uses the stairs constantly to go downstairs to have a smoke at least 15 to 20 times a day. While there was none when the tenant filed her application, it now appears "J" now has more of an established routine. Since the application was filed, there is less noise and it has quieted down from its peak. The tenant understands and recognizes that "T" is helping "J" with employment and that "J" may have what the tenant describes as *limited capacity*.

The landlord gave the following testimony. The building is an age restricted building with 96 units, many of them single seniors. "T" the building manager involves himself socially with the tenants who may require help and social interaction. He tries to help them by doing some shopping for them and inviting them to holiday parties.

"J" lives directly across the hall from the tenant. He is hired to do odd jobs and the landlord cannot disclose if he has disabilities. When the complaints started on June 30<sup>th</sup>, the landlord responded in writing to the tenant advising her that "J" has been spoken to. Since then, the stomping on the stairs has ceased. "J" may have been verbally aggressive before the complaint, but no longer is. Steps have been taken so that "J" does more work outside, away from the presence of the tenant in order to avoid her coming into contact with him.

The tenant once complained about "J" shovelling snow between 1:30 and 4:30 in the morning, but the landlord justified it as being necessary for emergencies and ambulances. "J" has been instructed not to speak back to any tenant who complains to him.

### Analysis

Section 28 of the Act states:

#### **Protection of tenant's right to quiet enjoyment**

**28** 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*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In determining whether a tenant's right to quiet enjoyment has been breached, I must determine whether the tenant's ordinary and lawful enjoyment of the rental unit has been substantially interfered with as a result of either the landlord's actions or inaction. In other words, even if it is a third party that is responsible for such interference, if the landlord fails to take reasonable remedial action, the landlord may still be found to be in breach of the tenant's right to quiet enjoyment.

In the matter before me, I find the landlord took immediate and appropriate steps to ensure the tenant's right to quiet enjoyment of the rental unit was not breached. In the tenant's own testimony, "J" is no longer verbally aggressive towards her; he doesn't stomp on the stairs to deliberately harass her; and apparently goes out of his way to avoid her presence. If there was once was an interference with the tenant's ordinary and lawful enjoyment of the rental unit, it no longer appears to be ongoing.

I accept that the tenant may feel uncomfortable when "J" is surrounded by people he feels comfortable with while the same people are not on friendly terms with the tenant. I cannot compel the landlord to make this situation better for the tenant as a section 28 breach as I would not consider the complaint to be a substantial interference with the tenant's enjoyment of the property. The interference would have to be determined to be both significant and unreasonable to the point of being very egregious.

Consequently, I do not find the landlord has failed to protect the tenant's right to quiet enjoyment of the property and I dismiss this application.

#### Conclusion

This application is dismissed without leave to reapply.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

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 25, 2022

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Residential Tenancy Branch