



# 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 as a result of the Tenants' Application for Dispute Resolution, made on November 29, 2022 (the "Application"). The Tenants applied for an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to the *Residential Tenancy Act* (the "*Act*"), as well as for the return of the filing fee..

The Tenants and the Landlord attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence. As there were no issues raised, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an 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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

1. Are the Tenants entitled to an order that the Landlord comply with the regulations, tenancy agreement or the *Act*, pursuant to Section 62 of the *Act*?
2. Are the Tenants entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

### Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2019. Currently, the Tenants pay rent to the Landlord in the amount of \$1,548.00 on the first day of each month. The Tenants paid a security and a pet damage deposit, each in the amount of \$800.00.

The Tenants stated that the occupant of the basement suite is breaching their quiet enjoyment of the upper portion of the rental property. The Tenants stated that for the past couple years, they have expressed their concerns to the Landlord regarding the occupant of the basement having guests coming and going, sounds of screaming, smoking in the yard with the door open, the gate being left open, cigarette butts being thrown on the ground, a crack pipe being found in the yard, and one of their guests being found in the Tenants' storage space. The Tenants stated that they have been threatened by the occupant's family. The Tenants stated that they have texted the Landlord on numerous occasions throughout the tenancy, however, the issues persist. The Tenants stated they provided 150 screen shots of text messages in support.

The Landlord stated that he has investigated each of the Tenants' concerns, however, has not found any evidence to support their claims. The Landlord provided his own text messages and emails between the Tenants and the occupant. The Landlord stated that he is unable to evict the occupant without proof to substantiate the Notice to End Tenancy. The Landlord stated that the downstairs occupant has similar grievances regarding the upper Tenants. The Landlord stated that the Tenants seem to be retaliating towards the downstairs occupant by throwing dog feces on their stairs.

The Tenants were asked to indicate what evidence they provided in support of their concerns. Aside from a large amount of text messages they sent to the Landlord throughout the tenancy, the Tenants referred to a video which shows that the occupant's guest attending the front door of the rental unit to collect mail. At one point the guest is heard asking "what are you looking at? I'll punch you out".

If successful, the Tenants are seeking the return of their filing fee.

### Analysis

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

Section 28 of the Act provides that a Tenant is entitled to quiet enjoyment including the right to reasonable privacy and freedom from unreasonable disturbance. Residential

Tenancy Policy Guideline 6 further discusses the right to quiet enjoyment and provides that:

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.

Residential Tenancy Policy Guideline 6 also sets out that;

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.

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.

In this case, it is apparent that the Tenants are in conflict with the occupant who resides in the basement of the rental property. I accept that the Tenants have notified the Landlord about their concerns with the occupant, however, I find that the Tenants have provided insufficient evidence to demonstrate that they have experienced substantial interference with the ordinary and lawful enjoyment of their rental unit.

I find that the Landlord has taken action to address the conflict between the parties and I find that the Landlord has provided sufficient evidence to demonstrate that the Tenants have been contributing to the conflict at the rental property. I find that there is insufficient evidence before me to indicate that the Landlord has breached the Act or the tenancy agreement. As such, I dismiss the Tenants' Application with leave to reapply.

It is suggested that the Tenants and the occupant avoid further contact and communication with each other. The Tenants are encouraged to maintain respectful communication with the Landlord and maintain a journal along with evidence to support any possible future concerns.

The Landlord must ensure that the Tenants' right to quiet enjoyment is protected and must take action to address any situations which may impact this right. Should the

Landlord fail to take action to address the Tenants' concerns, the Tenants are at liberty to make an Application for rent reduction or other monetary compensation.

### Conclusion

The Tenants have provided insufficient evidence to demonstrate that their right to quiet enjoyment of the rental unit has been breached or that the Landlord has not taken action to address the Tenant's concerns. As such, the Tenants' Application 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: April 06, 2023

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Residential Tenancy Branch