



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. No issues were raised with respect to the service of the application and evidence submissions on file.

### **Issues**

Should an order be issued requiring the landlord to comply with the Act, regulation or tenancy agreement?

Is the tenant entitled to a monetary order for loss?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### **Background and Evidence**

The rental unit is an apartment in a multi-unit complex. The tenant resides on the ground floor. The building is pet friendly. The tenancy began November 2, 2019. The neighboring tenant directly above the tenant's unit began her tenancy December 2020 (the "neighbor").

The tenant is seeking the landlord be ordered to comply with his entitlement to quiet enjoyment of the rental unit. The tenant submits that the neighbor is interfering with his right to quiet enjoyment and that the landlord has failed to take any meaningful action. The tenant testified that there is constant banging and slamming of dresser drawers coming from above his bedroom. The tenant submitted a couple of audio files as evidence. The tenant submits the audio files were recorded between the hours of 11:00 p.m. and 4:00 a.m. The tenant submits the noises occur all throughout the night.

The tenant is also seeking compensation for loss of use his bedroom for a four-month period from February 2023 to June 2023. The tenant submits he hasn't been able to sleep in his bedroom as a result of the constant noise. He is seeking \$300/month for a total of \$1200.00.

The tenant further testified that the issues with the neighbor only arose after he made a complaint against her for a having a pet in her unit. This matter was dealt with by the landlord but since then the neighbor has had a grudge against him and also made some complaints against him.

The landlord submits she has taken timely and reasonable action to respond to the tenant's complaints. The landlord submits that even though the neighbor moved in December 2020, they did not hear any issues of noise complaints until January 2023. They dealt with the complaint from the tenant in regard to the pet even though the building is pet friendly which the tenant is aware of. The tenant is also aware that his unit is on the ground level of a multi-unit complex. They have investigated the noise complaints even conducting on site visits to the units involved. They have reviewed the audio files submitted by the tenant and can't find any evidence of any excessive noise that is inconsistent with daily living. The neighbor wears orthotics which may be leading to louder footsteps than normal.

### Analysis

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and

- use of common areas for reasonable and lawful purposes, free from significant interference.

*Residential Tenancy Policy Guideline #6* “Entitlement to Quiet Enjoyment” provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section.

I agree with the landlord and find that there is insufficient evidence of a substantial interference with the tenant’s lawful enjoyment of the rental premises. I also find the landlord has taken reasonable steps to respond to the tenant’s complaints and investigate the matter. This is supported by the various correspondence between the parties submitted as evidence. I have reviewed the submitted audio files and I do not agree with the tenant that you can clearly hearing banging or slamming of dresser drawers. There are some small noises in the background which could be something as little as the neighbor getting up to go to the bathroom at night. In either event, the tenant claims this has been an on-going issue for a four-month period; however, the tenant only submitted two four-minute audio clips as evidence which were both recorded on the same night.

I find there is insufficient evidence that the landlord is not complying with the Act. The tenant’s application requesting an order for the landlord to comply with the Act is dismissed without leave to reapply.

The tenant’s application for monetary compensation for loss of quiet enjoyment is also dismissed without leave to reapply. The tenant is not entitled to recover the filing fee.

### Conclusion

The tenant’s application is dismissed in its entirety without 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: June 09, 2023

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Residential Tenancy Branch