



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OLC

### Introduction

This was a hearing with respect to the tenants' application for an order directing the landlord to comply with the *Residential Tenancy Act*, Regulation, or tenancy agreement. The hearing was conducted by conference call. The tenants and the named landlord called in and participated in the hearing. The tenants submitted a binder of documentary evidence prior to the hearing. The landlord acknowledged receipt of the tenants' documents.

### Issue(s) to be Decided

Should the landlord be ordered to comply with the Act, Regulation or Tenancy agreement?

### Background and Evidence

The rental property is a house in Burnaby. It is divided into two separate rental units. The tenants occupy the lower level of rental property and the landlord rent the upstairs unit to other occupants under a separate tenancy agreement. The tenancy began on October 14, 2014. The monthly rent is \$1,250.00 and the tenants paid a security deposit of \$625.00 at the start of the tenancy.

The tenants claimed in the application for dispute resolution that there have been ongoing breaches of their right to quiet enjoyment and several instances of harassment by the occupants of the upper unit of the rental property.

The tenants testified that they have been disturbed by the upstairs occupants who have prevented them from having the use and enjoyment of the rental unit. The tenants have made written complaints to the landlords, but the landlords have refused to take steps to address the disturbances and harassment by the upstairs occupants.

The tenants referred to frequent complaints by the upstairs occupants to the tenants about food or cooking smells said to be emanating from the rental unit into the upstairs unit; complaints by the upstairs occupants because the tenants have guests to visit and unreasonable complaints when the tenants play music quietly at reasonable hours.

In their correspondence to the landlord the tenants referred to several incidents when the upstairs occupant swore at the tenants and used obscene and intimidating language. The tenants referred to incidents when the upstairs occupant complained because the tenants had guests, even though the guests were present in the afternoon until 8:00 P.M. The tenants said that they have been so intimidated they have cancelled guest visits because the other occupants objected to them having people over.

A recurrent issue is the upstairs occupants' complaints about the tenants' cooking odours. The smell of cooking is carried upstairs by the forced air furnace. The tenants have attempted to ameliorate the problem by ensuring that the furnace is turned off before they begin food preparation. The tenants said they use the stove hood fan when they are cooking but it is very noisy.

The landlord said that the upstairs occupants have lived at the rental property since 2011. He testified that he has spoken to the upstairs tenants about their conduct towards the tenants and they have moderated their behaviour. He noted that some of the rude behaviour happened in 2014; it was addressed at the time and has not been repeated.

The landlord testified that the forced air heating system is part of the problem because it causes both odours and noises to be transmitted from one suite to the other. The landlord said that communication between the tenants is part of the solution to minimize conflicts. The landlord has done work to reduce the use of the forced air heating system and he suggested installing a more powerful range hood fan in the rental unit to reduce the transfer of cooking smells. The tenant objected to the fan replacement because of anticipated noise problems from a more powerful fan.

### Analysis

The tenants requested remedy is an order that the landlord comply with the Act, Regulation, or Tenancy agreement. The tenants claim that they have been harassed and their quiet enjoyment disrupted by the upstairs occupants. The tenants did not specify how they say the landlord has failed to comply with the Act Regulation or tenancy agreement. According to the tenants the upstairs occupants are unreasonable

and unduly sensitive; they suggested that the landlord should be acting to evict the occupants of the upper suite.

The landlord testified that he has endeavoured to work with the occupants of both rental units to minimize the impact each has on the other. The landlord has dealt with what the tenants allege was inappropriate conduct by the other occupants. I do not find, on the evidence presented that the conduct of the upstairs occupants and their issues with noise and odours would constitute sufficient grounds to justify the landlord in issuing a one month Notice to End Tenancy for cause and I find that the tenants have not shown that the landlord has failed to comply with the *Act* Regulation or tenancy agreement. The tenants were aware, when they rented a unit in a residential house that they would not have the same isolation from the other occupants as they would have in traditional apartment or a single occupancy structure.

I encourage the landlord to investigate and implement where feasible, measures to further sound proof and isolate the separate units in the rental property.

### Conclusion

The tenants' application is dismissed.

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: December 16, 2016

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Residential Tenancy Branch