



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC

### Introduction

This hearing dealt with the tenant's application pursuant to section 62 of the *Residential Tenancy Act* (the *Act*) for an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement, as the tenant considered the landlord had failed to protect their quiet enjoyment of their rental unit.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on October 15, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Issues(s) to be Decided

Should any orders be issued with respect to this tenancy? Is the tenant entitled to a reduction in monthly rent as a result of their loss in quiet enjoyment of their premises?

### Background and Evidence

This tenancy began on January 1, 2017, as a one-year fixed term tenancy. The tenancy continued after the expiration of the initial term as a month-to-month tenancy. Monthly rent since January 1, 2018 has been \$1,037.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$500.00 security deposit paid on December 15, 2017.

The tenant's application, written evidence and sworn testimony maintained that the landlord has been remiss in attending to the tenant's concerns about the activities of the tenant who resides below them in this rental building (the downstairs tenant). The tenant commenced raising a range of concerns to the landlord on July 15, 2018 regarding the downstairs tenant's frequent use of marijuana and "crack" which causes smoke to enter the tenant's rental unit. In addition to the health concerns and damage to the contents of the tenant's rental unit, the tenant also raised complaints with the landlord regarding noise coming from the downstairs tenant's rental unit, alleging among other things that the premises are being used by the downstairs tenant as a location for prostitution. The parties entered into written evidence a series of emails between the tenant and the landlord, in which the tenant provided detailed information regarding the extent to which the tenant maintained that the landlord was not protecting the tenant's right to quiet enjoyment of the premises.

In the tenant's sworn testimony at the hearing, the tenant identified three principal aspects to their application.

1. The tenant asked that action be taken to ensure that their right to quiet enjoyment be restored.
2. The tenant alleged that management has been unprofessional and negligent on a continuing basis in responding to the tenant's legitimate requests for assistance regarding the unacceptable activities undertaken by the downstairs tenant, which have reduced the tenant's quiet enjoyment of the premises.
3. Although the tenant said that they are actively seeking alternate accommodation, the tenant requested some type of assurance that future requests for assistance from the landlord would be addressed in a more timely and adequate fashion than had occurred since the tenant started raising concerns with the landlord.

During the hearing, the tenant also asked for monetary compensation for their loss of quiet enjoyment, although no figure had been identified as part of the tenant's application for dispute resolution.

The landlord gave undisputed sworn testimony that the landlord's records show that the tenant's first contact with the landlord's representatives regarding these issues occurred on August 6, 2018, and not July 15, as maintained by the tenant. The landlord asserted that they had provided a full list of emails received from the tenant and responses provided, which demonstrated that the tenant's requests were all acknowledged and answered to the extent possible, given the privacy implications involved, within a week.

The landlord also entered into written evidence copies of four letters sent to the downstairs tenant regarding either "Illegal Substance/Noise Disturbances" or "Illegal Substance." These letters dated August 22, August 30, September 25 and October 1, 2018 advised the downstairs tenant that others in their building had complained about smoke from illegal substances emanating from their rental unit and affecting other tenants quiet enjoyment of the premises, as well as noise disturbances. These letters advised the downstairs tenant that if these activities did not cease that the landlord may attempt to end this tenancy for cause. The landlord noted that the tenant had advised that the downstairs tenant's behaviours had improved to an extent after some of these warning letters were received, and that the landlord remained hopeful that improvements would continue.

The landlord also gave sworn testimony and written evidence that one of the landlord's representatives did inspect the tenant's rental unit twice on October 30, 2018, but noticed no odour from marijuana or other drug use in the tenant's rental suite.

The tenant confirmed that the smell was not present to any great extent during the two inspections on October 30, 2018. The tenant was advised in an email from the landlord's representative who attended this hearing that the tenant should contact the landlord again to arrange another inspection when the smell of drug use by the downstairs tenant became offensive. The tenant gave undisputed sworn testimony that the landlord's representative who attended their rental unit on October 30, did not respond to three such requests from the tenant, all initiated during standard daytime working hours, and then failed to show up at the rental unit for another scheduled inspection arranged by the tenant. The landlord responded that the end of each month is a particularly busy time for the landlord's representatives and that this may have factored into the alleged inaction in following up on the commitment to conduct a return inspection of the tenant's rental unit.

### Analysis

Section 62 of the *Act* reads in part as follows:

- 62** (1) *The director has authority to determine*
- (a) disputes in relation to which the director has accepted an application for dispute resolution, and*
  - (b) any matters related to that dispute that arise under this Act or a tenancy agreement...*

*(3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.*

In their application, the tenant alleged that the landlord had failed to protect their right to quiet enjoyment of their rental unit, a protection outlined in section 28 of the Act, which reads in part as follows:

**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;...*

Sections 65(1)(c) and (f) of the Act allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been “a reduction in the value of a tenancy agreement.”

While the tenant has found their neighbour's actions upsetting, residing in a multi-unit rental building sometimes leads to disputes between tenants. When concerns are raised by one of the tenants, landlords must balance their responsibility to preserve one tenant's right to quiet enjoyment against the rights of the other tenant who is entitled to the same protections, including the right to privacy and quiet enjoyment, under the Act. Landlords often try to mediate such disputes if they can, but sometimes more formal action is required. While the speed with which the landlord's attendance to this matter and indeed the responsiveness to the tenant's concerns are not to the tenant's satisfaction, I find that there is evidence that the landlord has commenced an appropriate process to address the tenant's concerns about the activities of the downstairs tenant. At the hearing, the landlord said that the last two letters sent to the downstairs tenant should not have been labelled as "Second Warnings", but Third and Fourth Warnings. The landlord provided written evidence and sworn testimony that these letters plus any demonstrated evidence of police reports or confirmed reports of inspections by the landlord's representatives would be critical in establishing a further course of action to address the tenant's concerns.

To assist with this process, and as indicated at the hearing, I order the landlord to attend at the tenant's rental unit at 4:30 p.m. on Tuesday, November 13, 2018, to monitor the extent to which noxious smoke is entering the tenant's rental unit from the

downstairs tenant's rental unit. In the event that the landlord's representative discovers insufficient evidence of noxious smoke entering the tenant's rental unit on November 13, 2018, I further order the landlord to conduct a repeat inspection of the tenant's rental unit for similar purposes, the following week at 4:30 p.m. on Tuesday, November 20, 2018. I also order the tenant to allow the landlord's representative(s) to enter their rental unit on those occasions. These orders in no way limit the parties from making additional arrangements to follow up on complaints from the tenant about the actions of the downstairs tenant.

I also order the tenant to provide the landlord with police file numbers for their calls to the police regarding disturbances that may arise in the future regarding the downstairs tenant.

I also find that there is at least an element of merit to the tenant's assertion that the only reason that the landlord is now paying attention to the tenant's concerns is in direct response to the tenant's launching of an application for dispute resolution to the Residential Tenancy Branch. I find that the value of the tenant's tenancy agreement has been diminished by the slow pace that the landlord has chosen to respond to the tenant's concerns. Even after the landlord's representative attended the rental unit for two inspections and that representative's manager, the person who attended this hearing on the landlord's behalf, sent the tenant an email assuring the tenant that the landlord would conduct further inspections when the smell of drugs was more prominent in the rental unit, the landlord's representative demonstrated indifference in failing to attach importance to the tenant's requests for assistance. Under these circumstances, I find that the tenant is entitled to a limited monetary award of \$100.00 for a reduction in the value of their tenancy agreement. I make this one-time award in accordance with sections 62 and 65(1)(f) of the *Act*.

As was noted at the hearing, it is in the interest of the landlord and the tenant to have a rental building that protects the quiet enjoyment of residents. I encourage the parties to work together in this matter so as to reach a satisfactory resolution of the tenant's concerns.

#### Conclusion

I order the landlord to attend at the tenant's rental unit at 4:30 p.m. on Tuesday, November 13, 2018, to monitor the extent to which noxious smoke is entering the tenant's rental unit from the downstairs tenant's rental unit. In the event that the landlord's representative discovers insufficient evidence of noxious smoke entering the tenant's rental unit on November 13, 2018, I further order the landlord to conduct a

repeat inspection of the tenant's rental unit for similar purposes, the following week at 4:30 p.m. on Tuesday, November 20, 2018. I also order the tenant to allow the landlord's representative(s) to enter their rental unit on those occasions.

I order the tenant to provide the landlord with police file numbers for their calls to the police regarding disturbances that may arise in the future regarding the downstairs tenant.

I issue a monetary award in the tenant's favour in the amount of \$100.00, which is to be implemented by the tenant's one-time reduction of monthly rent for an upcoming month of their tenancy.

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 06, 2018

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Residential Tenancy Branch