

DECISION

Dispute Codes: MNDC & FF

Introduction

This application was brought by the tenant seeking monetary compensation for loss of quiet enjoyment of the rental unit due to the sound of the ventilation system in the rental building.

Issues to be Decided

This application requires a decision on whether the tenant is entitled to compensation for loss of quiet enjoyment.

Background and Evidence

This tenancy began on November 24, 2008. Rent is \$825 per month and the landlord holds a security deposit of \$405 paid on November 24, 2008.

During the hearing, the tenant gave evidence that his quiet enjoyment of the rental unit had been compromised due to the sound of the building's ventilation system. He stated

that he also experiences an unreasonable degree of cooling in winter because one of the air ducts runs through a closet in his rental unit.

He stated that the unit runs seven and one-half hours daily and primarily concerns him on weekends as he works at three jobs and is not home during the week during the day.

The tenant stated that he had brought the matter to the attention of the building managers in late September 2009 and he had not be satisfied that the matter had been remedied in spite of several discussions with the managers.

The property manager noted that there are 72 units in the 30 + year-old rental building and that no other tenants had complained about the ventilations system, nor had the previous tenant of five years in the rental unit. She stated that the subject tenant had lived in the rental unit for 10 months and had not raised his concerns until September 22, 2009.

She said in summer it is necessary for ventilation and cooling purposes to operate the system daily. At the time of the complaint, it was set to operate for twice daily for two hours, in the morning from 8:30 a.m. and in the afternoon from 4:30 p.m. In an effort to accommodate the tenant, the morning start time was change to 10:30 a.m.

The building managers stated that when the tenant had called in late October and mentioned the loss of heat, they arranged to visit the rental unit to investigate, however, the tenant was not home when they arrived. They subsequently issued a 24-hour notice to inspect the unit, but the closet through which the vent was said to run was locked by the tenant as that is where he kept his valuables. The tenant had stated that he would be moving if matters were not remedied.

The corporate maintenance officer said he had attended the rental building in late October and had examined the fan on the roof and checked the noise level outside the rental unit and found no unusual conditions. He said that he works on approximately 18 buildings, and the ventilation system in question was not extraordinary.

From the end of October, the system has been off the automatic run cycles and is started manually as needed.

The property manager stated that relocation within the building may be an option, but the tenant had not requested a move.

Analysis

Section 32 of the *Act* provides that:

“(1) A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

I find that given the age of the building in question, it would not be unexpected that there be some noise emanating from the ventilation system, and it is commonly accepted wisdom that a fresh air exchange system is absolutely essential for the well being of building inhabitants.

In spite of that, I find that the landlords have made every reasonable effort to assess the matter and to accommodate the tenant by visiting the rental unit, adjusting the operating times of the ventilation system, by having their company maintenance worker examine the roof installation, and running the system manually as needed when temperatures permit.

Residential Tenancy Policy Guideline 6 – 2 advises that, “Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.” In view of the fact that the tenant is only home during the weekends when the system is operating, and only then at the heaviest use times, I find that his discomfort is temporary and does not constitute a loss of quiet enjoyment.

In addition, section 7 of the *Act* which provides for compensation aggrieved by the other’s failure to comply with the legislation or rental agreement, requires the aggrieved party to do whatever is reasonable to minimize the damage or loss. I find that the applicant failed to do so by not arranging a mutually agreeable time to inspect the rental unit and the locked closet, and by advising the building managers of his intent to move.

Conclusion

The application is dismissed without leave to reapply and the tenant remains responsible for his own filing fee.

February 22, 2010