



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

RR, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has applied to reduce rent for repairs, services or facilities agreed upon but not provided and to recover the filing fee from the landlord for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matter

At the start of the hearing the tenant was asked what remedy she was seeking. The tenant's Application did not contain an amount sought as a rent reduction, nor did the tenant, during the hearing, make any claim requesting rent abatement. The tenant's evidence indicates any rent abatement will be at the discretion of the dispute resolution officer.

The tenant testified that she had applied to seek a solution to the matter under dispute. Testimony was provided by each party in relation to possible repairs that might provide a solution in response to the tenant's Application and this formed the basic premise of the tenant's Application.

Issue(s) to be Decided

Is the tenant entitled to rent abatement for repairs?

Background and Evidence

The tenant has lived in this forty-nine year old, wood frame building, for twenty-one years. Approximately 5 years ago the tenant signed a new tenancy agreement.

The tenant lives on the ground floor of the building and is not adjacent to the boiler room. The tenant described a loud humming sound that has been occurring in her bedroom since late October, 2009. The tenant explained that the sound varies; it is loud at times, not present at times and at other times it is a softer sound.

The tenant has explored every possible source of this sound and has not been able to determine the source. The tenant is unable to sleep in her bedroom and her twelve year old son has difficulty sleeping in his room as the sound can be heard there.

The tenant's witness stated that she first heard the sound at the end of October and described it as somewhat like the sound a refrigerator makes. The witness and tenant did disconnect the refrigerator, to determine if that was the cause. The witness stated that the tenant's son has commented that he is able to go to sleep more easily when he sleeps at the witness's home, as he does not hear the sound that is present in his bedroom.

On December 4, 2009 the tenant wrote the landlord to complain about the noise that she had first verbally reported 2 months prior. The tenant acknowledged that attempts had been made to address the problem, but that no one had attended at her apartment to hear the noise firsthand. The tenant indicated that her health was suffering and that she would like the problem resolved by December 31, 2009.

The landlord attended at the rental unit on February 19, 2010 at 11 p.m. in order to investigate the sound and the parties went to the boiler room together, turned off a pump, returned to the unit to find that the sound had ceased. On February 26, 2009 boiler pump motor #1 was changed and during a visit by the landlord at 11:30 p.m. it was determined that there had been a reduction in the level of the noise.

The landlord has done what they find is reasonable; they have changed the pump in the boiler room and find that any sound now present in the tenant's bedrooms is insignificant. The landlord is willing to respond to any direction that a certified plumber makes, but is not willing to make any further payments for a plumber. The landlord rejected the tenant's suggestion that a plumber attend at the rental unit at 11:30 p.m., as overtime rates would be incurred.

Analysis

Section 32 of the Act provides that a landlord must maintain the rental property in a state of decoration and repair that complies with health, safety and housing standards required by law. The evidence and testimony provided by each party confirm the reports of a noise, investigation by the landlord and an attempt to address the source of the sound through the replacement of a boiler room pump.

From the testimony before me the only conclusion that I can come to is that the source of the sound may be originating from the boiler room pump that was replaced. Both parties confirmed that when this pump had been turned off at 11:30 p.m. the sound had ceased. Once the pump was replaced the sound resumed, but, according to the landlord, to a reportedly less significant degree.

The tenant has not applied requesting repairs, therefore; that matter is not before me.

In relation to the tenant's request for compensation as the result of dealing with the noise she has found disturbing, the tenant has the burden of proving her claim supporting rent abatement. Residential Tenancy Branch policy suggests that the tenant must show that there has been a substantial interference with her ordinary, lawful

enjoyment of the rental unit and that the landlord's actions have rendered the unit unfit for occupancy.

I find that this is a reasonable test and I have considered all of the evidence in testimony in reaching my decision. There is no doubt that the tenant is hearing something that is causing her to be disturbed. During the hearing neither party could confirm the origin of the sound. It is not clear that the sound is emanating from the building, but there is evidence that the boiler pump #1 could be the source.

The landlord has made efforts to address the tenant's concerns and replaced the pump. I do find that the landlord's initial response was slow and that they should have taken the tenant's concern more seriously. However, even if the landlord had responded more quickly and replaced the pump, which both parties had agreed appeared to be the source of the sound, once the pump was replaced the tenant continued to express concerns in relation to a sound.

I find that that the tenant has not provided evidence to convince me that, on the balance of probabilities, that her rental unit has been rendered unfit for occupancy. Unreasonable and ongoing noise can form the basis of a claim for the loss of quiet enjoyment and a corresponding loss in value of the tenancy; however, in the absence of any definitive evidence that the sounds heard are to the degree that would breach health and safety standards required by law, I find that the tenant's claim for rent abatement is dismissed.

During the hearing the landlord indicated that the tenant could consider moving to another unit when one becomes available in the building.

As the tenant's Application does not have merit I decline to order return of the filing fee costs.

Conclusion

I find that the tenant's claim is dismissed without leave to reapply.

The tenant is not entitled to return of the filing fee costs.

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: March 25, 2010.

Dispute Resolution Officer