

DECISION

Dispute Codes ERP, RP

Introduction

This hearing dealt with the tenant's application pursuant to section 33 of the *Residential Tenancy Act* (the *Act*) for an order to the landlord to make repairs to the unit and to make emergency repairs for health or safety reasons.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The parties agreed that the tenant handed the landlord's representative his dispute resolution hearing package on December 24, 2010. I am satisfied that the tenant has served his application for dispute resolution in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to an order requiring the landlord to make repairs to the unit, site or property? Is the tenant entitled to an order requiring the landlord to make emergency repairs for health or safety reasons?

Background and Evidence

This periodic tenancy commenced on June 1, 2010. Monthly rent is set at \$625.00, payable on the first of each month.

The tenant's rental suite is a one bedroom unit located above the service room and furnace for this 38-unit building. Since at least mid-December 2010, the tenant has been making complaints to the landlord's building manager and assistant manager regarding noise that is causing him disturbance in his rental unit. He provided written and oral testimony that this noise worsens at night and that the vibrations and humming noises are loud and disturbing. He believes these noises are associated with the building's heating or plumbing system. He also noted that there have been some periods (e.g., December 24, 2010 until January 3, 2011; January 14 until present) when there have been no noises. During those periods, he thinks that the landlord's efforts to remedy the problem have been successful.

The landlord's building manager, assistant building manager and the maintenance person who lives in the building and services the heating and plumbing systems all testified that each time they attend the tenant's rental unit, they are unable to hear the noises that the tenant maintains have been occurring. The tenant testified that the noises usually occur during the middle of the night when only he is in the rental unit. The landlord's assistant building manager did respond to the tenant's call one night at

3:40 a.m. but could only hear what she described as a low hum, a noise that she did not find disturbing.

The maintenance person testified that he has inspected and examined those portions of the heating and plumbing system that could cause unusual noises and has been unable to identify anything that requires maintenance or replacement.

The parties agreed that the landlord has offered the tenant a number of other one bedroom rental units in this building. The only unit which remains available is one next to the tenant's suite which the tenant has rejected because he believes this unit is subject to the same noise problem as his unit. He rejected the offer of the other rental units because at the time they were offered he believed that the landlord's actions had remedied the noise problem in his suite.

Analysis

Based on the oral and written testimony of the parties, I am not satisfied that the tenant has provided sufficient evidence to enable me to issue an order to the landlord requiring to undertake repairs or emergency repairs. The tenant testified that the noises that prompted his application have been absent since Friday, January 14, 2010, after an incident with his toilet seems to have remedied the problem, at least in the short-term. As such, there is certainly no issue requiring "emergency repairs" as set out in section 33 of the *Act*.

Turning to the tenant's application for an order requiring repairs, I note that no one other than the tenant has heard the noises that disturb him. The tenant provided no witnesses to these noises, explaining that he lives alone and the noises are much worse late at night. I find that the landlord's representatives have attempted to the best of their ability to locate the source of any noise problem that may be present in the tenant's suite, even though no one other than the tenant has heard these noises. The landlord provided undisputed testimony that no other tenant in the building has complained about noise emanating from the service room, the heating system or the plumbing system. The landlord has made a number of offers of other one bedroom units in the building to the tenant since he started raising concerns about noise in his rental unit. The landlord also committed to offer additional one bedroom units to the tenant as they become available if he continues to experience noise issues that trouble him in his existing suite.

For the reasons outlined above, I dismiss the tenant's application for an order requiring the landlord to undertake repairs or emergency repairs. The tenant has not provided

sufficient evidence to substantiate his contention that an order requiring repairs or emergency repairs is warranted.

Conclusion

I dismiss the tenant's application 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*.