



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, ERP, RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an order to the landlords to make emergency repairs for health or safety reasons pursuant to section 33;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order to the landlords to make repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant testified that he handed the landlord's representatives a copy of the tenants' dispute resolution hearing package on January 13, 2012. The landlords' representative who attended this hearing (the landlord) confirmed that the landlords received the tenants' dispute resolution hearing package, but said that this did not happen until January 16, 2012. In either event, I am satisfied that the tenants served this package in accordance with the *Act* and that the parties had exchanged documents with one another and were prepared to proceed with a hearing of this application.

The tenants originally applied for a monetary award of \$1,068.00 for their loss of quiet enjoyment of their premises. They calculated this reduction on the basis of a reduction of \$204.50 per month for rent paid due to their loss of up to one half of their nightly sleep, plus a further \$50.00 per month for loss of quiet enjoyment, and recovery of their \$50.00 filing fee. In their submission received by the RTB on January 24, 2012, they requested an amended monetary award of \$1,322.50 to include a total reduction in rent of an additional \$254.50 for February 2012. Their revised requested monetary award of \$1,322.50 was to cover the five months of their tenancy from October 1, 2011 until February 29, 2012. I have amended the amount of their requested monetary award to \$1,322.50, as requested by the tenants.

Issues(s) to be Decided

Are the tenants entitled to an Order requiring the landlords to conduct emergency repairs to their rental unit? Are the tenants entitled to a monetary award for loss of quiet enjoyment during this tenancy? Are the tenants entitled to an Order requiring the landlords to conduct repairs to their rental unit?

Background and Evidence

This periodic tenancy commenced on September 30, 2011. Monthly rent is set at \$1,227.00, payable in advance on the last day of each month. The landlords continue to hold the tenants' \$613.50 security deposit paid on September 13, 2011. The landlord did not dispute the tenants' oral and written evidence that a provision of their residential tenancy agreement requires them to make a payment, presumably for liquidated damages, if they were to end their within the first five months. The landlord said that this charge would not be applied if the tenants were to move to another rental unit within this building or within the landlords' housing portfolio, including a nearby rental building. Neither party entered into written evidence a copy of the residential tenancy agreement for this tenancy.

The tenants applied for an order requiring the landlords to conduct repairs or emergency repairs to alleviate a noise in their bedroom wall between the headboard of their bed and their balcony door that they find particularly unsettling and disturbing. In the tenants' January 11, 2012 written submission, they described the noises in the following terms:

*...This irritating noise comes and goes every 5-15 mins, speeds upslows down, gets louder and continues this sort of cycle constantly. Since the 1st of October we have been sleeping with ear plugs each night and almost every night one if not both of us will wake up and can still hear the noise through the ear plugs. This has been going on almost 3 and a half months now and has caused alot of arguments within our relationship due to the constant strain of complaining about the noise...We cannot enjoy our apartment in peace and for the rent we are paying we believe we should at least be able to get a good night's sleep...
(as in original)*

They maintained that these loud and recurring tapping noises are worst "during the night (as we are woken by it every night) and this is not a time that tenants would be turning on and off their heating." They claimed that these noises are far different to the creaking noises that typically occur when heating is turned on or when plumbing noises occur. They stated that they have tried to reconfigure their bedroom to reduce the impact of the noises but the layout of the bedroom leaves them with minimal options for doing so.

Although the tenants entered into evidence a copy of a disk with 28 recordings of the noises, they admitted that the sound quality was lacking. They did not provide any equipment to either the landlord or the Residential Tenancy Branch (RTB) to assist in listening to these recordings. The landlord testified that she could not hear the noises on the disk that the tenants provided. Although I was able to hear some noises on the disk, the sound quality was so poor that I had to increase the sound level to a point where it became difficult to determine the true magnitude of the noise problem. I am able to attach little weight to this evidence.

The tenants entered undisputed oral and written evidence that they first notified the landlord of the noise problem on October 13, 2011, a few weeks after they commenced their tenancy. They placed nine phone calls to the landlord between October 13 and November 22, 2011 asking for an inspection and repair to alleviate this noise problem that was affecting their quiet enjoyment of their rental premises. They submitted two written requests by fax to the landlord on October 21, 2011 and November 24, 2011. Although the tenants agreed that the landlords have inspected the problem, their inspections have not occurred at times when this problem is most prevalent (i.e., the middle of the night) and have not led to any substantive repair work that has resolved the tenants' concerns. In their November 24, 2011, the tenants requested a reduction in rent if the landlord

The landlords' most substantive written response was provided in a November 24, 2011 letter from the landlords' office manager to the female tenant, which read in part as follows:

We have received your letter regarding your concerns about a noise you hear in the wall of your suite.

We have discussed the situation with the manager, SH, and he advises that he did respond to your repair requests. He had professional plumbers in who checked the entire stack and cannot find a source for the noise you are hearing.

Knocking a hole in the wall will not resolve anything. Plumbing in these older hi-rises often tend to make noises.

A rent reduction is not warranted in this situation. However, we sympathize with your sensitivity and therefore will be happy to move you to another suite as soon as something suitable comes available.

We hope that something will come available in short order and you will be able to remain in the building.

The parties agreed that the landlords alerted the tenants to a few rental suites that became available in their building and in a nearby building they owned. The female

tenant said that these rental units were unsuitable as they were more expensive. The landlord testified that the landlords discontinued alerting the tenants to the availability of other rental units when the tenants displayed no interest in transferring to any of the rental units previously identified by the landlords. The female tenant took issue with the failure of the landlords to let them know about the availability of rental units on an ongoing basis. However, at the hearing, the tenants said that they liked their existing rental unit and were unwilling to consider rental units facing the opposite side of their building. The landlord said that there was a similarly sized rental unit that would be coming available by the end of February for a slightly lower rent that was on the fourth floor, three floors directly below the tenants. She said that the rental unit will be extensively renovated and will be equipped with new appliances. Although the tenants said that they would consider this rental unit, the male tenant testified that for a reduction in rent of \$10.00 per month, it was unlikely that they would be willing to relocate lower in the building as it would reduce their view.

The tenants also gave oral and written evidence that the landlords' explanations for why they could not repair the noise problem have changed over time. They said that they were initially told that removing a three square foot piece of wall to conduct repairs was too small a job to attract qualified workers. Later, they claimed to have been told that the job was too big, as considerable repairs might be necessary for a company qualified to work with old asbestos. Although the landlord denied the tenants' claim that they were given inconsistent information by the landlords, she did confirm that any company retained to perform work on walls that contain old asbestos, as is the case in this building, has to be qualified to work with hazardous materials. She said that the landlords have been continuing efforts to retain a company to conduct this work, but there are not an abundance of these companies and most are very busy. The landlord said that the landlords are continuing to try to locate a company that will do this work.

The landlords entered oral and written evidence that they have investigated the tenants' complaints, spoken with other tenants, and sent out heating and plumbing professionals on three separate occasions (i.e., October 6, 2011, October 14, 2011 and October 26, 2011) to try to resolve any problems with the hot water heating system that might be affecting the tenants. The landlord said that no other tenants are making complaints about the noises identified by the tenants.

Analysis – Tenants' Application for Emergency Repairs

Section 33 of the *Act* outlines the grounds by which a tenant can seek or conduct emergency repairs during a tenancy. Although the noises that are disturbing the tenants are no doubt upsetting to them, I do not view the requested repairs as ones that fall into the category of emergency repairs under section 33 of the *Act* requiring urgent

action necessary for the tenants' health or safety or for the preservation of the residential property. The tenants have not submitted evidence to demonstrate that the requested repairs qualify as emergency repairs under the *Act*. I dismiss the tenants' application for emergency repairs without leave to reapply.

Analysis – Tenants' Application for a Monetary Award

Section 28(b) of the *Act* guarantees a tenant's entitlement to quiet enjoyment of the rental unit, including "freedom from unreasonable disturbance." Section 65(1)(c) and (f) of the *Act* enables me to make a finding and issue an order to allow the tenants a monetary award for the loss in value of their tenancy agreement.

In considering this matter, I find that the reduction in rent requested by the tenants made a somewhat artificial distinction between what they identified as "loss of quiet enjoyment" and the remainder of their claim for a monthly reduction in their rent. As such, I have given consideration to their loss of quiet enjoyment and the reduction in the value of their tenancy agreement, as per section 65(1)(f) of the *Act*.

I find that the tenants are not entitled to a retroactive reduction in their rent for the entire duration of their tenancy as they have claimed. During October 2011, the landlords sent the heating expert who looks after the hot water heating system to the building to investigate the tenants' complaints three times. Consequently, I dismiss the tenants' application for a reduction in rent for October 2011 without leave to reapply.

Until the landlords provided their November 24, 2011 response to the tenants, I am satisfied that the landlords were taking adequate measures to investigate this problem and take measures to attempt to resolve it. As of that date, I find that the landlords have not demonstrated that they have been taking effective action to ensure that the tenants receive quiet enjoyment of the rental unit and the level of services they committed to obtain in exchange for their monthly rent.

I find that the tenants are entitled to a rent deduction of \$200.00 per month for each full month that they have been receiving a reduced level of services from the landlords. I find this monthly rent deduction is commensurate with the level of disturbance the tenants have experienced and their loss of quiet enjoyment of the rental unit. For December 2011, January 2012 and February 2012, I order a monetary award in the tenants' favour in the amount of \$200.00 for each month. I limit the tenants' eligibility to a rent deduction for November 2011 to the 7-day period from November 24, 2011 until the end of November 2011. I allow a pro-rated monthly deduction of 7/30 of \$200.00 for November 2011, a total of \$46.67 for the tenants' loss of quiet enjoyment and the value of the services and facilities provided by the landlords for November 2011.

As the tenants have been successful in their application, I allow them to recover their \$50.00 filing fee from the landlords.

To give effect to the \$696.67 monetary award issued in the tenants' favour, I order the tenants to reduce their next monthly rent payment by that amount.

Analysis – Tenants' Application for Repairs

The Landlords have an obligation under section 32 of the *Act* to repair and maintain a rental unit so that it complies with health, safety and housing standards required by law. Section 62 of the *Act* enables me to make a finding of fact regarding an issue before me and to make an Order necessary to give effect to a tenant's rights under the *Act*.

In this case, I accept that the landlords made repeated attempts in October 2011 to find a way to alleviate the tenants' complaints of noise. However, as these attempts did not reach a satisfactory resolution of this problem, the tenants remain with a troubling noise problem that the landlord seems to be doing little to address. I do not accept that the tenants should be forced to accept the landlord's claim expressed in the landlord's office manager's November 24, 2011 letter that "plumbing in these older hi-rises often tend to make noises." While the landlord claimed to have been trying to locate a qualified company to conduct further work on the tenants' wall, the landlord produced no details regarding any of the steps being taken. The landlord did not produce a list of qualified companies, did not provide any details regarding the dates when any of these companies were contacted, and did not provide any estimated time frame as to when, if ever, the landlord will be able to commission a qualified company that will be able to investigate and, if necessary, conduct repairs. Since November 24, 2011, I find that the landlords have chosen to disregard the tenants' concerns and refuse to reduce their rent. Until now, there has been no impetus for the landlord to take further action. I do not accept that the landlords have demonstrated that they have taken measures beyond an offer to relocate the tenants elsewhere in this building or to one of their other buildings. While the tenants may be unusually sensitive to these noises, it is also possible that new tenants who occupy this rental unit will become exposed to the same disturbing noises that have affected this tenancy.

For these reasons, I order the landlords to commission a qualified company (or companies) able to remove a portion of the tenants' wall between their headboard and balcony door to investigate and, if necessary, enable repairs to resolve the tenants' ongoing concerns about noises in their bedroom wall. Based on the landlords' evidence, I understand that it may take some time to retain a company to conduct these repairs. Until such time as this process has been concluded and the corrective repairs,

if necessary, have been completed, I allow the tenants to reduce their rent by the following amounts until the end of May 2012.

Item	Amount
Reduction in Monthly Rent for March 2012	\$200.00
Reduction in Monthly Rent for April 2012	300.00
Reduction in Monthly Rent for May 2012	400.00

I emphasize that the tenants are only entitled to the above-noted escalating rent reductions in the event that corrective action has not been completed by the date in the month when rent becomes due. For example, if the landlords are unable to resolve these problems before February 29, 2012, I order the tenants to reduce their monthly rent payment due on that day by \$896.67 (i.e., \$696.67 for recovery of the monetary award issued in this decision plus \$200.00 for failure to complete steps to resolve the noise problem before February 29, 2012). Once the landlord has completed the actions ordered in this decision, the next monthly rent reverts to the amount stated in the residential tenancy agreement (excluding the rent deduction to implement the tenants' monetary award outlined above.)

By May 31, 2012, I would anticipate the landlords would have been able to investigate and repair the work required to remedy the tenants' concerns. As circumstances will no doubt change by May 31, 2012, I do not order any rent reduction after May 2012. If the problem is not remedied by that date, I would expect that the tenants would have given serious consideration to transferring to another of the landlord's rental suites. At any rate, I order that the monthly rent revert to the amount stated in the residential tenancy agreement as of May 31, 2012. Both parties are at liberty to apply for dispute resolution with respect to issues of repairs or entitlement to rent reduction beyond the end of May, 2012.

Conclusion

I dismiss the tenants' application for emergency repairs without leave to reapply.

I issue a monetary award in the tenants' favour in the amount of \$696.67 which allows the tenants to receive a reduction in rent of \$200.00 for each of December 2011, January 2012 and February 2012, \$49.67 for November 2011, and to recover their \$50.00 filing fee from the landlords. To implement this monetary award, I order the tenants to reduce their next scheduled monthly rent payment by \$696.67.

I order the landlords to commission a qualified company (or companies) able to remove a portion of the tenants' wall between their headboard and balcony door to investigate

and, if necessary, enable repairs to resolve the tenants' ongoing concerns about noises in their bedroom wall. Until such time as this process has been concluded and the corrective repairs, if necessary, have been completed, I order the tenants to reduce their rent by the following amounts until the end of May 2012.

Item	Amount
Reduction in Monthly Rent for March 2012	\$200.00
Reduction in Monthly Rent for April 2012	300.00
Reduction in Monthly Rent for May 2012	400.00

The tenants are only entitled to the above-noted rent reductions in the event that corrective repairs have not been completed by the date in the month when rent becomes due. If the repairs have been completed by the date when rent becomes due, monthly rent reverts to the amount stated in the residential tenancy agreement, other than that reduction identified in the monetary award issued in this decision. Monthly rent reverts to that set in the residential tenancy agreement on May 31, 2012. Both parties are at liberty to apply for dispute resolution with respect to issues of repairs or entitlement to rent reduction beyond the rental period ending on May 30, 2012.

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: February 10, 2012

Residential Tenancy Branch