



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RP, PSF, RR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant for a monetary order, make repairs to the unit, provide service or facilities required by the Act, and allow the tenant to reduce rent for repairs.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The evidence of the tenant was through the landlord's interpreter.

Preliminary issue

The tenant filed an Application for Dispute Resolution and a hearing was held on January 9, 2012. The parties entered into a settlement agreement at that hearing.

The terms of the agreement are as follows:

It was agreed that the landlord would schedule a plumber to come in and inspect and repair any heating and plumbing issues as required within the next 15 days. It was agreed that 24 hours notice will be given by the landlord to the tenant for any and all work referred to in condition #1.

The above particulars comprise full and final settlement of all aspects of the dispute arising from this application for both parties. [reproduced as written]

The tenant alleges that the landlord did not comply with the provision of the settlement agreement, because he is still hearing the noise in the rental unit and is seeking compensation as in his original application.

Issue(s) to be Decided

Has the landlord breach the terms of the settlement agreement?
Is the tenant entitled to monetary order?
Is the tenant entitled to make repairs to the unit?
Is the tenant entitled to service or facilities required by the Act?
Is the tenant allowed to reduce rent for repairs?

Background and Evidence

The tenant testified that the landlord has not complied with the terms of the settlement agreement made on January 9, 2012. The tenant states he is still hearing a noise coming from the heating system in his rental unit.

The landlord testified the buildings heat is provided by a boiler. The boiler heats the water and the hot water travels through pipes, each rental unit has a zone valve.

The landlord testified on January 9, 2012, a plumber tested the zone valve in the tenant's apartments and the plumber could not detect any unusual noise coming from the heating system. This confirms the same finding, found by a different plumber, at an earlier service call to the tenant's rental unit for the same noise complaint.

The witness for the landlord testified that he is a licensed plumber and that he attended the tenant's rental unit and inspected the zone valve. The witness states there is nothing wrong with the heating system, and the noise the tenant is hearing is normal for a hot water heating systems.

The landlord testified that he hired a company that specialized with this type of heating system to come and look at the entire system for the building, including the boiler. They were instructed to inspect the system for any unusual noises. The landlord states they did not detect any unusual noise. However, the company did have some suggestion of repair and the landlord had all the recommended repairs completed. The landlord states this company performed the work on January 30, 2012, January 31, 2012, February 2, 2012 and February 3, 2012. These were the dates available by the company to perform the work.

Filed in evidence is an invoice from the company that inspected and repaired the hot water heating system.

The landlord testified that on February 10, 2012, the plumbing company that inspected the zone valve at the tenant's rental unit went to the tenant's rental unit to inspect the tenant's noise complaint again, and again they found nothing unusual. Filed in evidence is written notice to the tenant that the plumber is coming. Filed in evidence is a work order with the results of the plumber's findings at that service call.

The tenant testified he did not have this noise when he lived in another rental unit in the same building. The tenant states that he should be entitled to a rent reduced or the landlord should be required to change the heating system to electric heating.

Analysis

In this case, I must determine if the landlord has breached the settlement agreement made by the parties on January 9, 2012.

The evidence of the landlord was a company was hired and they did extensive work on the hot water heating and plumbing system.

The evidence of the plumber was they have inspected the tenant's rental unit and they have found nothing wrong with the hot water heating system and any noise the tenant is hearing is normal.

The documentary evidence of the landlord shows he had a company who specialized in hot water heating systems inspect and repair the heating system. The documentary evidence, from the company states "Complaints from Tenants. Checked boiler for any unusual noises. All seemed fine" [reproduced as written].

The documentary evidence of the landlord from the plumbing company states "heating system and controls all operating correctly. Noise comes from system start up when pipework cold. This is due to expansion and contraction in the pipework. Minor clicking sounds come from heaters and last for only a couple of seconds during start up. This is normal." [reproduced as written]

I find the landlord has complied with the settlement agreement and had the heating system inspected and repaired.

The landlord has a responsibility under Section 32 of the Act to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

I find that the landlord has complied with the health, safety and housing standards required by law and has made the heating system suitable for occupation for the tenants. Therefore, I find the landlord has not breached the settlement agreement or Section 32 of the Act.

The evidence of the tenant is that he is still hearing noises and when he lived in another rental unit in the building he could not hear any noises for the heating system. The tenant needs to appreciate that the landlord has made every attempt to reduce the noise he is hearing. The experts in this area have found that this noise is normal for this type of hot water heating system.

The tenant must understand that even though he did not hear these noises coming from the heating system in another rental unit, it is plausible that the hot water pipes are in a different location throughout the building and each rental unit would experience the noise differently.

The evidence of the tenant was that the heating system should be changed to electric heating. That would be unrealistic to have the landlord incur such an expense, because

the tenant is hearing a noise that is bothersome to him. The tenant must accept that this is a character for this rental unit.

As, the settlement agreement made by the parties on January 9, 2012 was comprise full and final settlement of all aspects of the dispute arising from both parties and as I have found the landlord has not breached the settlement agreement or the Act.

I find the tenant's application has no merit and it based on the same facts and issues present at the first hearing. I dismiss the tenant's application in its entirety, without leave to re-apply.

As the tenant has not been successful with his application the tenant is not entitled to recover the cost of filing the application.

Conclusion

The tenant's application is dismissed in its entirety without leave to re-apply.

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 22, 2012.

Residential Tenancy Branch