



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AGB Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, OLC, RP, RR, FF

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss; for an Order requiring the Landlord to comply with the *Residential tenancy Act (Act)* or the tenancy agreement; for an Order requiring the Landlord to make repairs; for authorization to reduce the rent; and to recover the fee for filing this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submission.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

Issue(s) to be Decided

Is the Tenant entitled to compensation for being disturbed by noise from a building fan and/or vent and is there a need to order the Landlord to repair the building fan and/or vent?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on May 01, 2013; that the rental unit is on the third floor of the residential complex; that the furnace room and the outlet for the fan from the laundry room is on the first floor of the complex; and that the rental unit is not directly above the furnace room/fan outlet, but it is on the same side of

the building. A photograph was submitted in evidence which shows the location of the furnace room in relation to the rental unit.

The Tenant stated that when she viewed the rental unit she made it very clear that she was looking for a quiet home; that an agent for the Landlord assured her that the rental unit was very quiet; that during the first five weeks of her tenancy she was not disturbed by noise; that on June 08, 2013 she was consistently disturbed by noise coming from the furnace room; that she reported her concern to the Landlord on June 10, 2013; that the noise was constant for approximately one week; that she now hears a fan operating constantly from 9:00 a.m. until 9:00 p.m.; that she hears a mechanical noise intermittently during the evening, which comes on approximately every 25 minutes; and that as a result of the noises she cannot nap during the day or sleep during the night without being awakened by the noise.

The Property Manager stated that there is a fan for the laundry room which operates constantly from 8:30 a.m. until 10:00 p.m. every day; that the fan is necessary to extract moisture from the laundry room; that the timing of the fan has not changed in recent history; that upon receiving a complaint from the Tenant they had a new timer installed to ensure the fan was starting/stopping at the appropriate times; that the timer was replaced only as a precautionary measure and not because it was deemed to be faulty; and that the company that provided the specifications for the fan inspected the system sometime between June 11, 2013 and July 16, 2013 and determined that it was functioning properly. The Landlord submitted a letter from the company that inspected the system, dated July 16, 2013, which outlines the need for the fan.

The Property Manager stated that there is also a vent from the boiler which cycles periodically throughout the day and night, which he believes is responsible for the noise the Tenant hears during the night. He stated that the boiler provides hot water for the building and that upon receiving a complaint from the Tenant they had the boiler inspected by a heating technician sometime between June 11, 2013 and July 16, 2013, who determined the system was functioning properly. The Landlord submitted a letter from the company that inspected the system, dated July 18, 2013, which corroborates this testimony.

The Property Manager stated that the Landlord has received no other complaints regarding the noise from the fan/vent. The Landlord submitted a letter from the occupant of unit #210, which is directly above the fan/vent, in which the occupant declared that she has lived in the unit since 2005 and has not been disturbed by noise from the laundry or furnace room. The Tenant stated that she went to the unit #210 and heard loud music/radio emanating from the suite so she speculates that this occupant may simply be less sensitive to noise.

Analysis

On the basis of the undisputed evidence, I find that noise from a heat vent can be heard periodically throughout the day and that noise from a laundry room fan can be heard

during the day and early evening. On the basis of the testimony of the Property Manager and the letters from two technicians that were submitted in evidence, I find that heat vent and laundry room fan are necessary to maintain the residential complex and that they are functioning properly.

On the basis of the testimony of the Tenant, I accept that this noise is disturbing her.

Section 28 of the *Act* entitles a tenant to the quiet enjoyment of a rental unit, which includes freedom from unreasonable disturbances. As the evidence shows that heat vent and laundry room fan are necessary to maintain the residential complex and that they are functioning properly, I find that the mechanical noise caused by these items should not be considered unreasonable.

In determining that the noises are not unreasonable, I was heavily influenced by the Property Manager's testimony that no other occupant has complained about this noise; by the letter from the occupant of unit #210; and by the absence of evidence from any other occupant of the residential complex who is disturbed by the noise. While this Tenant may be particularly sensitive to noise, the Landlord cannot be expected to eliminate noise that is directly related to mechanical functions that are necessary for the general operation of the residential complex.

I therefore dismiss the Tenant's claim for an Order requiring the Landlord to make repairs and/or to comply with the *Act* and for compensation relating to the noise.

Conclusion

I find that the Tenant's application is without merit and I dismiss her application to recover the filing fee.

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: August 15, 2013

Residential Tenancy Branch

