



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Anavets Senior Citizens' Housing Society
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, PSF, RR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord provide services or facilities required by law; for an order allowing the tenant 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 the application.

The tenant and an agent for the landlord society attended the hearing and each gave affirmed testimony. The parties also provided evidentiary material prior to the commencement of the hearing and the tenant called one witness who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the parties agreed that the landlord will send a contractor to the rental unit below the tenant's rental unit to re-attach the pipes to the wall and/or floor so that they cannot be removed. The cover will also be attached in such a way that it cannot be removed by the tenant in that unit. The parties also agree that the landlord will not contact the tenant's doctors, and I so order.

Issue(s) to be Decided

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of quiet enjoyment?

- Has the tenant established that the landlord should be ordered to comply with the Act, regulation or tenancy, and more specifically by providing the tenant with quiet enjoyment of the rental unit?
- Has the tenant established that the landlord should be ordered to provide services or facilities required by law?
- Should the tenant be permitted to reduce rent for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that he had resided in one rental unit within the rental complex for about 9 years. The tenant moved to the current rental unit about 7 months ago. Rent is subsidized and the tenant's portion is \$320.00 per month payable on the 1st day of each month and there are no rental arrears. The landlord holds a security deposit in the amount of \$200.00 that was paid at the outset of the first tenancy.

The tenant suffers from rheumatoid arthritis and has provided a letter from a doctor stating that the condition causes the tenant significant disability. The letter also states that the tenant requires a peaceful home environment so that he can get adequate rest. The tenant testified that the tenant in the rental unit directly below has caused continuous noises that affect the tenant's quiet enjoyment. The tenant testified that the tenant below has been banging on heating pipes and lifting them and banging them down. He also leaves the exhaust fan on and a vibration has started. The vibrations are loud and the tenant's chair was even vibrating. The tenant has talked to the landlord about speaking with the neighbor below, but the noises continue and the stress is overwhelming.

The tenant asks that the landlord give a notice to the tenant in the lower unit to cease with the noise and hopes that will stop the vibrations.

The tenant's witness testified that he was in the rental unit about a month ago and noticed the vibration on the floor. The witness moved to a chair and the vibration followed him. The vibration was strong and could also be heard.

The landlord's agent testified that the source of the noise that the tenant has complained about has been investigated and nothing has been found that could make the noise the tenant speaks of.

The landlord's agent further testified that the tenant was moved into this rental unit from another within the complex at the beginning of January, 2013 because the landlord could not establish the complaints that the tenant made. To make the tenant more comfortable, the landlord offered a different rental unit. At this point, the landlord does not have another rental unit to offer the tenant, and the landlord is not able to establish the noises that are bothering the tenant.

The landlord has also provided copies of incident reports showing that the complaints were investigated, and an invoice from a plumbing and heating company which states that the heating and boiler systems in the buildings were investigated and no noises were detected. It also states that the tenant explained that there was a vibration under his bed and under the living room coming from the unit below, but no problems were found that would cause it. The plumbing system and the fridge were also checked for the cause of the vibration but no problem could be found.

Analysis

In order to be successful in a claim for monetary damages, the onus is on the tenant to establish that the tenant has suffered a loss of quiet enjoyment as a result of the landlord's failure to comply with the *Residential Tenancy Act*, and more specifically for failure to investigate and deal with noise complaints. In the circumstances, I cannot find that the landlord has ignored the tenant or that the landlord has not done its due diligence in attempting to ascertain where the noise comes from. I am not satisfied that the noise is a deliberate attempt by another neighbour to continuously annoy the tenant. I find that the tenant has failed to establish a monetary order for loss of quiet enjoyment.

I further find that the tenant has not established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement or that the landlord should be ordered to provide services or facilities required by law. I find that the landlord has attempted to find the source and it simply cannot be found. The tenant has asked that the landlord give a cautionary letter to the tenant in the lower unit to cease with the noise, but the landlord cannot do so without some clear indication that the tenant in that unit is doing something wrong. The incident reports provided by the landlord show that the complaints were investigated and no noises were found. I therefore find that the landlord has been complying with the *Act*, and no further orders are warranted.

Having found that the tenant has failed to establish that the landlord has not complied with the *Act* or the tenancy agreement, I also find that the tenant has failed to establish that rent should be reduced for repairs, services or facilities agreed upon but not provided, and that portion of the tenant's application is also dismissed.

Conclusion

I hereby order, by consent, that the landlord retain a contractor to attend at the rental unit below the tenant's rental unit to re-attach the pipes to the wall and/or floor so that they cannot be moved or removed. I also order that the cover be attached in such a way that it cannot be removed by the tenant in that unit.

I further order, by consent, that the landlord not contact the tenant's doctors.

The balance of the tenant's application is hereby dismissed 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*.

Dated: April 03, 2014

Residential Tenancy Branch

