



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Imperial Towers
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, OLC, MNDC, FF

Introduction

This hearing dealt with an application by the tenant seeking an order to have the landlord comply with the Act, regulations or tenancy agreement, an order to have the landlord conduct repairs to the unit, site or property, and an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about January 1, 2014 and is ongoing. Rent in the amount of \$1200.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$600.00.

The tenant gave the following testimony:

The tenant stated that there has been “loud banging noise coming from the heating system since I moved in here”. The tenant stated that the frequency is between 10-30 minutes 24 hours a day. The tenant stated it gets worse at night and that has prevented him from getting proper sleep. The tenant stated that he informed the property manager of this issue. The tenant stated that plumbers have inspected the problem on three separate occasions. The tenant stated he believes the problem to be “water hammer” that’s caused by an improperly installed zone valve. The tenant stated that it’s affected his mental and physical health along with his relationships and work. The tenant stated that as the weather has warmed up the issue has subsided to the point where in the

“past week it’s been silent”. The tenant stated that he is seeking a \$600.00 rent reduction for each month the issue continues, seeks a repair order to have the problem fixed as well as \$600.00 compensation for the months that he’s lost the quiet enjoyment of his apartment.

The landlord gave the following testimony:

The landlord stated that there is no problem. The landlord stated that if the noise was as bad as what the tenant stated, other tenants would have complained. The landlord stated that in a 263 unit apartment no one has complained about this except the subject tenant. The landlord stated that the plumbers have attended to this issue several times and have not found any problems. The landlord stated that he would gladly repair something if there was something wrong, but there isn’t. The landlord stated that the recording of the noise from the tenant is inconclusive and should not be accepted.

Analysis

When a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The tenant has not satisfied me on all four of the above grounds as required, specifically #1 and # 2. Based on the insufficient evidence before me and on the balance of probabilities I dismiss the tenants’ application in its entirety.

Conclusion

The tenants’ application is dismissed in its entirety.

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 30, 2014

Residential Tenancy Branch

