



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC, RP, RR, FF

Introduction

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

- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an order requiring the landlords to make repairs to the rental unit, pursuant to section 33;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

The two landlords and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlords confirmed that they received the tenant's application for dispute resolution hearing package ("Application") outside their door. Although this is not one of the accepted methods of service as per section 89 of the *Act*, I find that the landlords received the Application, they had notice of this hearing and they had an opportunity to review the Application. In accordance with section 71(2)(c), I find that the landlords were sufficiently served for the purposes of the *Act*, with the tenant's Application.

Issues to be Decided

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to make repairs to the rental unit?

Is the tenant entitled to an order to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlords testified that this month to month tenancy began on October 1, 2014 and the tenant continues to reside in the rental unit. Monthly rent in the amount of \$750.00 is payable on the first day of each month. A security deposit of \$380.00 was paid by the tenant on September 25, 2014 and the landlord continues to retain this deposit.

The tenant seeks an order for the landlords to comply with the *Act* and tenancy agreement by repairing a noisy furnace in his rental unit. The tenant also seeks a reduction in his rent in the amount of \$250.00 per month, retroactive from October 2014 to present and for any future months of non-compliance. The tenant seeks to recover the \$50.00 filing fee from the landlords for his Application.

The tenant stated that at the time he inspected the rental unit before he moved in, he did not notice a noisy furnace in the rental unit. The tenant stated that after he moved in, he noticed the loud furnace, particularly at night. The tenant indicated that this noise is a loud, high-pitched sound that reverberates into his bedroom. The tenant maintained that he notified the landlords immediately about this noise and asked for the problem to be fixed. The tenant provided a printout of text messages between the parties and the landlords acknowledged the text messages were accurate representations of the conversations between the parties. The parties agreed that as per the text messages, the landlords acknowledged the tenant's complaints regarding the loud furnace on October 3, 2014, two days after the tenant moved into the rental unit.

The tenant acknowledged that the landlords made repeated efforts to fix the furnace and surrounding area in order to minimize the noise to the tenant. The tenant stated that the landlords have personally attended at the rental unit to listen to the sound and have tried to fix the problem personally. The tenant indicated that the landlords have had a furnace repair "technician" attempt different methods to fix the furnace noise. The tenant indicated that the noise became better as of November 25, 2014, but the noise is still present. The tenant indicated that the landlords have refused to attempt any further methods to try to solve the noise problem. The tenant stated that he has been sleeping in the living room because he cannot sleep with the noisy furnace sound in the bedroom. The tenant stated that he has a right to quiet enjoyment and peaceful sleep at the rental unit. The tenant testified that he has tried to look for another unit to relocate but that he has been unsuccessful as he requires a furnished place close to work for the next one to four months, before he relocates permanently to another city.

The landlords testified that the two previous tenants in the rental unit had never complained about any loud furnace noise. The landlords stated that they could hear a normal furnace noise that was not objectionable when they attended at the rental unit. The landlords stated that the tenant advised them that he was a light sleeper and that was likely the reason that the tenant

was noticing a furnace noise. The landlords maintained that the other tenant currently occupying the room next to this tenant, also beside the furnace, cannot hear any loud furnace noise.

The landlords indicated that they called the technician when they were first informed of the noise and the hot water tank was removed and the furnace room was insulated. At this time, the technician advised the landlords that the furnace was in good working condition, there were no problems and the noise was a normal sound. After the tenant continued to complain of the noise, the landlords recalled the technician who again attempted to isolate the noise and vibration. At this time, the technician advised the landlords that nothing more could be done, aside from removing the furnace itself. The landlords stated that removing the furnace from the rental unit was not an option. The tenant indicated that the landlords have not come in to the rental unit to listen to the furnace since the technician was last there, as the noise continues to be bothersome to the tenant. The landlords indicated that they offered the tenant the option of vacating the rental unit with no notice because they understand that the tenant is unhappy living there. The landlords maintained that the tenant is not entitled to compensation for this furnace noise issue because they have consulted a professional technician and done everything possible to fix the noise since they were informed by the tenant about the problem.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Section 32(1)(b) of the *Act* discusses the landlord's obligation to maintain the rental unit in a state of repair that, having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I accept the tenant's evidence that he was disturbed by the furnace noise. The landlords indicated that no other tenants, including the two previously in this rental unit and another tenant that currently resides next door, have complained about this problem. I find that the landlords have attempted to fix the problem, have had a professional technician examine the furnace which is in good working order and have tried a number of different methods to reduce the noise. There is no problem with the furnace itself. The furnace cannot be removed from the rental unit. I find that the landlords have attempted to make the rental unit suitable for occupation by the tenant by attempting to reduce the noise coming from the furnace room. The tenant admitted that the noise has improved. Accordingly, I dismiss the tenant's Application for an order for the landlords to comply with the *Act*, Regulation or tenancy agreement and for the landlords to make repairs to the furnace and surrounding area.

Section 65(1)(f) of the *Act* states that past or future rent may be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement.

I find that the tenant has not met his burden to show that he is entitled to compensation for a reduction in the value of his tenancy agreement, due to lack of sleep and a loss of quiet enjoyment from the furnace noise. I find that the landlords made immediate and ongoing efforts to fix the furnace and the surrounding area in order to ensure that the noise would be reduced. I find that while the furnace may still be making a noise that is disturbing the tenant, this is not a noise that is present due to the landlords' negligence in failing to maintain the furnace in good working order. Accordingly, I dismiss the tenant's Application for a reduction in his rent in the amount of \$250.00 per month, retroactive from October 2014 to present as well as for losses into the future.

As the tenant was unsuccessful in his Application, I find that he is not entitled to recover the \$50.00 filing fee from the landlords. The tenant must bear the cost of his own filing fee.

Conclusion

The tenant's entire Application is dismissed.

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: March 30, 2015

Residential Tenancy Branch

