



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Southview Property Management Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for repairs - Section 32; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to repairs?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on March 1, 2016. Rent of \$2,500.00 is payable monthly.

The Tenant states that from the onset of the tenancy the fridge has made a loud and disturbing noise approximately every half hour and lasts for an average of 10 minutes.

The Tenant states that the noise irritates the Tenants and disturbs their sleep. The Tenant states that the Landlord was informed and after a second repair visit, the fridge was repaired so that the noise was barely audible. The Tenant states that about a week following this repair, the noise started to return in increasing volume. The Tenant states that the Landlord has been given weekly reports from the Tenants on the noise,

including its return, and that the Landlord has failed to further repair or replace the fridge.

The Landlord states that while she has an audio recording of the noise provided to her from the Tenant, which is noted as not having been provided as evidence for this hearing, the Landlord cannot comment on the loudness as the Landlord does not know how close the audio recorder was to the noise site. The Landlord states that the first technician told the Landlord that if they wanted the noise to go away a new fridge would have to be purchased. The Landlord states that the owner of the unit is concerned about the expense of replacing the fridge and that in the Landlord's experience new fridges can even make a noise. The Landlord agrees to replace the fridge but cannot offer any latest date for its repairs other than as soon as possible, citing ordering time, delivery time and organizing the elevator for delivery. It is noted that the rental unit is located in a large city.

Analysis

Section 32 of the Act provides that a landlord must provide and maintain residential property in a state of repair that makes it suitable for occupation by a tenant. Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance.

I accept the Tenant's persuasive evidence that the fridge made a loud noise every ½ hour or so that unreasonably disturbed the Tenants. I also accept that the noise is returning and that the Landlord has agreed to replace the fridge. Given the unit's location in a large city that would reasonably provide rapid sale and delivery and considering the amount of time that the Tenants have had to live with a disturbing noise, I find the Landlord's inability to set a date for replacement unreasonable. I therefore order the Landlord to have the fridge replaced no later than 6 p.m. on May 11, 2016. Should the Landlord fail to act as ordered, I give the Tenants leave to reapply and to seek compensation. As the Tenants' application has been successful I find that the

Tenant is entitled to recovery of the filing fee and I order the Tenant to deduct the **\$100.00** filing fee cost from future rent payable in full satisfaction of this claim.

Conclusion

I order the Landlord to replace the fridge by no later than 6 p.m. on May 11, 2016. I order the Tenant to deduct \$100.00 from future rent payable.

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: May 04, 2016

Residential Tenancy Branch