



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OLC

Introduction

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

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on September 13, 2018. The landlord stated that his documentary evidence was not served to the tenant. I accept the undisputed affirmed evidence of both parties and find that the landlord was properly served with the notice of hearing package and the tenant's submitted documentary evidence via Canada Post Registered Mail on September 13, 2018. The landlord failed to serve the tenant with his documentary evidence and as such failed to comply with section 88 of the Act. The landlord's documentary evidence is excluded from consideration in this hearing.

Preliminary Issue(s)

At the outset it was clarified with both parties that the tenant seeks:

- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67.

The tenant had clarified in his application the request for the landlord to abide by item #3 in the settlement agreement made In July 20, 2018 Residential Tenancy Branch Decision with the landlord, which states in part,

3. The landlord agreed that if the tenant notices an increase in noise coming from equipment in the ventilation room and provides the landlord with a written request to conduct further investigation of these noises that the landlord will take appropriate action to address the situation.

Although the tenant failed to file a specific monetary claim, both parties confirmed the tenant filed a monetary worksheet detailing a claim for \$1,200.00, but the tenant clarified a monetary compensation request totalling \$1,050.00 for:

\$400.00	\$200.00 per month for reduction in rent for repairs/landlord's inaction for two months
\$150.00	Loss of Quiet Enjoyment, Compensation for two month period
\$500.00	Compensation, Undue Stress/Anxiety due to landlord's inaction

Issue(s) to be Decided

Are the tenants entitled to an order for the landlord to comply with a condition of a settlement agreement?

Are the tenants entitled to an order for monetary compensation for the loss of quiet enjoyment?

Are the tenants entitled to an order reducing rent for repairs/inaction by the landlord?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began in 2003 and the current monthly rent is \$630.00 payable on the 1st day of each month. A \$250.00 security deposit was paid.

The tenant seeks an order for the landlord to comply with a condition of a settlement agreement made in a previous Residential Tenancy Branch Hearing on July 20, 2018. In that hearing the tenant had previously applied for an order regarding repairs. In that original hearing, the Arbitrator wrote in part,

The tenant applied for an order requiring the landlord to undertake repairs to maintain equipment that he hears in his rental unit from the ventilation room on the other side of

his wall. **The tenant provided written evidence and sworn testimony that noises he described as "bumping" or "thumping" started occurring in February 2017.**

Although the situation has improved a number of times after he has contacted the landlord, **the problem was still causing him problems in May 2018**, when he applied for the issuance of an order requiring the landlord to undertake repairs.

At the hearing, the tenant testified that about three weeks before this hearing the noise problem improved considerably. The tenant said that the situation had improved to the extent that 85% of the problem had been rectified for now and that he had considered withdrawing his application for dispute resolution. However, he would like the problem totally fixed so that he is not disturbed by these noises, particularly at night.

The landlord testified that there is a regular inspection schedule regarding **the "swamp cooler" which is installed on the ceiling between two rental units**. The landlord said that these inspections and maintenance visits occur in the fall and the spring each year.

Analysis

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding resolution of their dispute:

1. The landlord agreed to have semi-annual inspections of the swamp cooler conducted in the fall and spring of each year.
2. The landlord agreed to offer the tenant the first right of refusal should one of the other studio apartments in this rental building become available for rent.
3. **The landlord agreed that if the tenant notices an increase in noise coming from equipment in the ventilation room and provides the landlord with a written request to conduct further investigation of these noises that the landlord will take appropriate action to address the situation.**
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of the tenant's application and all issues currently in dispute arising out of this tenancy and that they did so of their own free will and without any element of force or coercion.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I order the landlord to have semi-annual inspections of the swamp cooler in this building conducted in the fall and spring of each year.

I also order the landlord to offer the tenant the first right of refusal should one of the other studio apartments in this rental building become available for rent.

The tenant stated that he continues to hear noise which is causing a loss of quiet enjoyment of the rental unit from the walls where this “swamp cooler” is located. The tenant stated that the landlord was notified in writing in a letter dated August 28, 2018 and again verbally on August 31, 2018 of the noise issue. The tenant stated as of the date of this hearing the landlord has failed to abide by the settlement agreement and investigate the ongoing noise issue.

The landlord disputes this claim stating that on September 14, 2018 the landlord attended the roof area and the area around the “swamp cooler” finding it running normal with no excessive noise. The landlord had a witness attend, B.T. who provided direct testimony that he had investigated the noise complaint reported 4-5 times earlier over a 2 year period and has “never heard noise”.

The tenant argued that the landlord and the witness, B.T. have never investigated the noise issue from within the tenant’s rental unit. The landlord confirmed that he has never given notice nor attended the tenant’s rental unit to investigate the noise issue. The witness, B.T. stated that he could not recall if or when he investigated the noise issues or if he had attended the tenant’s rental unit.

The tenant stated that he has suffered a loss of quiet enjoyment equating to approximately \$200.00 per month as a result of living with the constant noise issues in the rental unit. The tenant confirmed that the amount stated was “arbitrary” but confirmed that the noise is almost 24 hours a day for almost a 2 month period. The tenant described the noise as a “thumping sound” which he has tried to mitigate by having a fan run to “drown out” the noise.

The landlord provided no response other than to dispute the tenant’s request.

The tenant further stated that he suffers from stress and anxiety which is exacerbated by the noise and the landlord’s inaction in resolving the problem. The tenant stated that the landlord’s behaviour and conduct are poor and unhelpful.

The landlord argued that the tenant is the only person who has reported any noise issues in the entire rental building. The landlord stated that he has had 3 different contractors over the last few years inspect the “swamp cooler” and found no excessive noise.

The tenant seeks a third party contractor to investigate and resolve the noise problem.

Analysis

Section 62 of the Act states in part that the Arbitrator has the authority to determine any matters related to a dispute that arises to make a finding of fact or law that is necessary to making a decision or order.

In this case, the tenant seeks an order for the landlord to comply with an agreed upon condition of a settlement agreement. Both parties have confirmed and agreed that a settlement agreement was made as a result of a hearing on July 20, 2018. It states in part,

- 5. The landlord agreed that if the tenant notices an increase in noise coming from equipment in the ventilation room and provides the landlord with a written request to conduct further investigation of these noises that the landlord will take appropriate action to address the situation.**

Both parties confirmed that the tenant provided both written notice on August 28, 2018 and verbal notice on August 31, 2018 notifying the landlord of an ongoing noise issue that the tenant has reported coming through the walls of his rental unit. In the hearing and previous decision it was described as a “thumping noise” which most likely originates from a “swamp cooler” between the rental units. The only apparent tenant impacted is the named applicant. The landlord has stated that he attended the roof and the “swamp cooler” room and found no noise, but has never attended the tenant’s rental unit to investigate the noise. I find in the circumstances as the reported noise issue is impacting the tenant’s quiet enjoyment of the rental unit that it would be reasonable and prudent on the landlord’s part to investigate the noise from the tenant’s rental unit.

Upon receipt of this decision, I order that the landlord give proper notice to the tenant to attend and investigate the noise issue from the rental unit with a licensed contractor within 14 days. If noise is detected by the licensed contractor, the landlord is directed to provide the tenant with options in resolving the confirmed noise issue. If the landlord fails to comply with this directive the tenant may withhold \$50.00 per month from the monthly rent until the landlord complies.

On the tenant’s request for a reduction in rent and monetary compensation and compensation for the loss of quiet enjoyment, I find in the circumstances that although the landlord has failed to diligently comply with the settlement agreement what if any noise has yet to be determined as it is inconclusive based upon the evidence submitted. As a result, I find that the tenant has failed to establish a claim for a loss of quiet enjoyment and a reduction in rent for failing to comply. I also note that the tenant failed to provide sufficient evidence on which to calculate or quantify the monetary request. The tenant provided affirmed testimony that the monetary requests were “arbitrary” and not based upon any actual losses. This portion of the claim is dismissed.

Conclusion

The tenant's application is granted regarding the landlord's compliance in investigating the tenant's noise complaint as noted above.

The tenant's monetary request 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: November 5, 2018

Residential Tenancy Branch