



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BEACH PROPERTIES LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, FFT

Introduction

On July 15, 2019, the Tenant applied for a Dispute Resolution proceeding seeking a repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”), seeking a rent reduction pursuant to Section 65 of the *Act*, and seeking to recover the filling fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. In addition, the Landlord attended the hearing with P.G. attending as an agent for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlord with the Notice of Hearing and evidence package by hand on July 15, 2019 and the Landlord confirmed receipt of this package. The Tenant also submitted some digital evidence that he did not serve to the Landlord as he had already provided this to him prior to his Application. The Landlord confirmed that he had received digital evidence in the form of audio files in the past. While the Tenant did not serve this digital evidence, I am satisfied that the Landlord has had an opportunity to listen to this evidence in the past and as such, this audio evidence will be accepted and considered when rendering this decision. Furthermore, in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Notice of Hearing package and evidence.

The Tenant also advised that he submitted late evidence to the Residential Tenancy Branch on the day of the hearing, but he did not serve this to the Landlord. As he has not served this evidence in compliance with Rule 3.14 of the Rules of Procedure, I have excluded this evidence and it will not be considered when rendering this decision.

The Landlord advised that his evidence was served to the Tenant by posting it to his door on August 23, 2019 and the Tenant confirmed receiving this package. As this evidence was served within the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted the Landlord's evidence and will consider it when rendering this decision.

All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a repair Order?
- Is the Tenant entitled to a rent reduction?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on March 15, 2019. Current rent was established at \$2,114.00 per month, due on the first day of each month. A \$1,057.00 security deposit was also paid.

The Tenant advised that soon after the tenancy started, he heard a random tapping or rattling noise in the bedroom that would occur periodically, and he suspected that this might be due to recent renovations in the building. He stated that he advised the caretaker of this noise and had continual follow-up discussions as this problem was ongoing since the start of the tenancy. He also checked with other tenants to see if they also heard the noise, but it only affected him.

He stated that the caretakers visited his suite in May 2019, that they heard the noise, and that they would make efforts to fix it. They brought in a plumber to assess the situation and he made a hole in the wall, but he only stayed in the rental unit for a few minutes. No repairs were made so he wrote to the property manager and provided the

Landlord with audio recordings of this noise, but they visited the rental unit for only a few minutes and then left. He submitted email communications as documentary evidence to support his position.

He stated that the Landlord is not making any efforts to rectify the noise issue, and while it was offered to bring in an engineer to look into this issue, this was never scheduled. He advised that the Landlord offered to put him up in different available suites in the building, but these other units did not meet the specific, comparable qualifications that his current rental unit offered so he did not choose to move.

He advised that the noise in the rental unit is akin to a ball bouncing against the wall and he was told that this was likely due to hot and cold water going through the pipes. He stated that the noise is so loud that it prevents him from sleeping. Despite the many different pairs of earplugs he has tried, the noise is so significant that he is still able to hear it. He referred to the audio recording submitted and stated that the noise can be heard at the 20 second mark, 30 second mark, 38 second mark, and 47 second mark. He advised that the noise can last 30 – 45 seconds and for up to four to five minutes. However, he advised that the reason the noise is not more prominent in the audio recording is because it was recorded on a cell phone and not a proper recording device.

The Landlord advised that he attended the rental unit on May 29, 2019 with the Property Manager at 10:00 PM and they stayed there for 45 minutes. As well, he stated that the caretaker heard the noise, but it only lasted for less than three seconds, which is contradictory to the length of time the Tenant testified to. Furthermore, he stated that the noise is akin to tapping on a table. He advised that he had a plumber attend the rental unit twice to investigate this situation and he submitted invoices as documentary evidence to confirm this. He stated that the plumber cut a hole in the wall and checked for noise but could not detect any issues.

The Landlord advised that when other comparable units became available in the building, he offered these to the Tenant; however, the Tenant rejected these offers as they were deemed unsuitable for various reasons, not comparable, and he insisted on only wanting a unit on the 18th floor or higher. The Landlord submitted an offer letter as documentary evidence showing that he made attempts to work with the Tenant by finding more suitable housing in the building and even paying for moving expenses; however, the Tenant rejected this offer. In addition, he also offered to allow the Tenant to sleep in another unit for a month so that monitoring equipment could be placed in the

rental unit to detect and confirm the source of the noise; however, the Tenant rejected this offer as well.

The Tenant proposed that he was seeking that the Landlord investigate and determine the source of the issue, then compensate him for 50% of the rent that he has paid to date. He would also like all early termination fees and penalties waived as well as moving expenses, in addition to 20%. After the matter has been investigated, if it cannot be rectified, he is seeking compensation in the amount of a 75% reduction in the rent. If the noise continues, he seeks to be moved to a different rental unit, with similar or better amenities for the same or less rent, and with no noise issues. If this is not possible, he is seeking an additional 75% off the current rent until a suitable unit is found.

As well, if the noise issue can be fixed, he is seeking that repairs be made immediately, and that rent is free for this period. If he is required to move due to any repairs, he is seeking to be placed in a suitable rental unit, seeking not to pay rent for this period, seeking moving expenses, and seeking to be returned to the original rental unit once repairs are completed.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

Section 32 of the *Act* outlines the Landlord's obligation to repair and maintain the rental unit.

Landlord and tenant obligations to repair and maintain

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I find it important to note that the burden of proof on a claim is on the person making the Application. When reviewing the evidence and testimony before me, the Tenant has submitted that the level of the noise in his rental unit is so significant that he is “suffering greatly as a consequence; months of sleep deprivation is quite a torture, specially[sic] with all my responsibilities and commitments.” Furthermore, he emphasized that this noise is so severe that he can hear it even though he has attempted to wear many different earplugs, to no avail. He even stated during the hearing that he “wished” he submitted a picture of all of the different sets of earplugs by his bed.

However, when listening to the audio recording submitted by the Tenant, I could not hear any noise at all, let alone anything similar to what the Tenant was alleging. I could not even detect the noise that the Landlord advised was occurring. While the Tenant stated that the poor recording quality was due to the noise being recorded on a cell phone, it is not clear to me why he did not choose to record this on a different device to more adequately support his claim, rather than submit a recording which he acknowledged was inadequate. Moreover, even if this was recorded on a device which could not adequately capture the noise alleged by the Tenant, as he suggested that the level of the noise was such that it would keep him up at night despite wearing earplugs, I find that it would be more likely that not that I would be able to hear even the slightest noise on the recording, despite the quality of the recording device. I find that the absence of this significantly detracts from the credibility of the Tenant’s submissions supporting his claim.

Furthermore, while the Landlord acknowledges that there is some sort of noise, albeit not to the extent that the Tenant purports, I find that the Landlord has made varying attempts to accommodate the Tenant’s difficulties. However, each proposal has been blocked or refused by the Tenant as not being adequate. Given that the Tenant has suggested that the significance of the noise has impacted him so greatly that he has suffered months of sleep deprivation and that this is a “torture”, it is not clear to me why

the Tenant has not at least taken up the Landlord's offer to sleep in a different rental unit while the Landlord monitors and measures the extent of the noise in the rental unit. I do not find it reasonable that if this level of noise were such a disruption, that the Tenant would still choose to live in the rental unit instead of work with the Landlord towards rectifying this situation. This further causes me to question and doubt the severity of the allegations the Tenant is suggesting.

When reviewing the totality of the evidence before me, I do not find that the Tenant has submitted compelling or persuasive evidence supporting anything close to the level of disturbance that he is claiming. Furthermore, based on the above doubts, I find that I am skeptical of the reliability of the Tenant's testimony. As such, I do not find that the Tenant has substantiated a claim that a repair Order or a rent reduction are necessary to be granted. Alternatively, I am satisfied that the Landlord has made attempts to identify the problem, with no significant noise issue determined, and has offered viable, alternative solutions to try and work with the Tenant to accommodate his alleged complaints. Ultimately, as I am not satisfied that the Tenant has substantiated the claims in his Application, I dismiss the Tenant's claims in their entirety.

As the Tenant was unsuccessful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

I dismiss the Tenant's Application 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: September 9, 2019

Residential Tenancy Branch