



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, OLC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to comply with the *Act* pursuant to section 62.

The tenant attended the hearing and was given the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

The landlord did not appear at the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional forty minutes to allow the landlord the opportunity to call. The teleconference system indicated only the tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the landlord had been provided.

The tenant provided affirmed testimony that they served the landlord with the Notice of Hearing and Application for Dispute Resolution by registered mail sent on February 10, 2020 to the landlord address; the documents are deemed received by the landlord under section 90 of the *Act* five days later, that is, on February 15, 2020.

The tenant provided the Canada Post Tracking Number in support of service to which I refer on the cover page. Pursuant to sections 89 and 90, I find the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution on February 15, 2020.

Issue(s) to be Decided

Is the tenant entitled to the following:

- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order requiring the landlord to comply with the Act pursuant to section 62;

Background and Evidence

The tenant provided uncontradicted testimony as the landlord did not attend the hearing.

The tenant moved into the studio apartment in a rental building in 2003. Monthly rent is \$676.00 payable on the first of each month. The landlord continues to hold the tenant's \$250.00 security deposit paid when this tenancy began. There was no written agreement.

The tenant testified that since 2017, the air conditioning unit in the building, called a "swamp cooler" periodically creates noise that the tenant finds disturbing. He referred to the noise as "bumping" or "thumping" which can go on for hours and days. He requested an order compelling the landlord to conduct repairs and an order requiring the landlord to comply with the Act.

This is the third time the tenant has asked for essentially the same relief.

There are two previous Decisions concerning the same issue. The Decision numbers are referenced on the first page. The tenant submitted copies of portions of the Decisions and referenced the findings.

The first Decision is dated July 20, 2018. The issue before the Arbitrator concerned an application for an order requiring the landlord to undertake repairs.

The parties in the first Decision agreed to resolve the issue. The landlord agreed to have semi-annual inspection of the swamp cooler conducted in the fall and spring of each year. The landlord agreed if the tenant notices an increase in noise coming from equipment in the ventilation room and provided the landlord with a written request to conduct further investigation of these noises that the landlord will take appropriate action to address the situation.

The second hearing resulted in a Decision dated November 5, 2018 and followed a request by the tenant for an order upholding the requirement in the first Decision that the landlord inspect the “swamp cooler” which again was causing noise disturbing to the tenant. As in the first Decision referenced, the parties again agreed on a settlement. The landlord agreed to have semi-annual inspections (as in the first Decision) and the landlord agreed that if the tenant provided a written request to regarding noise from the cooling system, the “landlord will take appropriate action to address the situation”.

The Arbitrator ordered that the landlord:

“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 confirm noise issue. If the landlord fails to comply with this directive the tenant may withhold \$50.00 per month from the monetary rent until the landlord complies.”

The tenant claimed that once again the equipment is noisy, disturbing the tenant, and the landlord has ignored the tenant’s written request for inspection and maintenance.

The tenant provided a written statement in support of his testimony which is summarized as follows:

- The ventilation room has several moving parts which include a belt and pulley system that needs to be maintained on a regular basis;
- This sound can be loud enough to disrupt the tenant’s sleep and affect his work which involves writing in his unit;
- The sound and sleep disturbance negatively affect the tenant’s mental health;
- The system has not been maintained for 17 months, since October 2018, after the second hearing;
- If the system has been inspected, the landlord has not notified the tenant or assured the tenant that any maintenance requirements revealed during the inspection are addressed;
- On December 27, 2019, the tenant notified the landlord in writing about an

increase in problem with the noise, stating in part:

The sound coming from the ventilation system (“bumping” coming through my wall and ceiling) has increased.

Sometimes the noise is tolerable/okay, but on several occasions (or evenings) the noise increases to the point of disrupting my sleeping hours.

Could you please have your mechanic come in and perform maintenance on the ventilation system in order to alleviate the inconsistent “bumping” noise coming from the ventilation system.

The landlord has not responded.

The tenant requested an order to require the landlord conduct an inspection with a certified maintenance person twice annually, by April 30 and October 31, and to provide the tenant with written confirmation that the system has been inspected and maintained to good working order.

Analysis

Section 32 of the Act sets out the landlord’s duty to repair and maintain, stating as follows:

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.

I accept the tenant’s testimony which I found credible and which was supported by documentary evidence.

I find the landlord has been ordered twice to inspect the swamp cooler; the landlord agreed to have a semi-annual inspection in the first hearing. While not expressly stated, I find that implicit in the previous orders is a requirement that the landlord carry out maintenance which the inspections reveal is needed; otherwise, the inspections are useless. I find the landlord has not met the landlord’s obligations under section 32.

I accept the tenant's evidence and I find the landlord has not conducted the semi-annual inspections as ordered and has not had the cooler inspected since October 2018 in violation of the Decision of July 2018. I find the tenant has submitted letters regarding the noise which have been ignored by the landlord.

I accept the tenant's evidence that the incessant, loud noise from the cooler disturbs him. I find the landlord is in violation of the landlord's obligations under section 32.

I therefore direct as follows:

1. The landlord shall have the swamp cooler inspected within 10 days of the date of this Decision by a qualified service provider;
2. The landlord shall forthwith have the swamp cooler maintained as recommended by the service provider during the inspection;
3. The service provider shall forthwith provide written confirmation of the details of the inspection and confirmation of completed maintenance, a copy of which shall be immediately provided to the tenant;
4. From now on, the above inspection and maintenance accompanied by written confirmation from a qualified service provider to the tenant, shall take place on or before the last days of April and October of each year.
5. If the landlord fails to carry out the terms of this Order, the tenant may withhold \$400.00 from his rent payable on the next due date and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.

I find it is not necessary to consider the tenant's application under section 62.

Conclusion

Further to section 32(1), I direct as follows:

1. The landlord shall have the swamp cooler inspected within 10 days of the date of this Decision by a qualified service provider;
2. The landlord shall forthwith have the swamp cooler maintained as recommended by the service provider during the inspection;
3. The service provider shall forthwith provide written confirmation of the details of the inspection and confirmation of completed maintenance, a copy of which shall be immediately provided to the tenant;
4. From now on, the above inspection and maintenance accompanied by

written confirmation from a qualified service provider to the tenant, shall take place on or before the last days of April and October of each year.

5. If the landlord fails to carry out the terms of this Order, the tenant may withhold \$400.00 from his rent payable on the next due date and continuing thereafter on the first of each subsequent month until such time as the landlord complies with the terms hereof.

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 17, 2020

Residential Tenancy Branch