



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MACDONALD COMMERCIAL REAL ESTATE SERVICE
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, RP, FFT

Introduction

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

- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 33; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. This hearing lasted approximately 42 minutes.

The landlord confirmed that he was the property manager for the landlord company named in this application and that he had permission to represent it at this hearing. The landlord confirmed that he also had permission to represent the landlord owner of this rental unit at this hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the Act, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

Both parties agreed to settle a portion of the tenant's application, except they were unable to settle the tenant's rent reduction claim for \$3,600.00 and the application filing fee claim of \$100.00, so I made a decision regarding the tenant's monetary claims only.

Settlement of Repairs Issue

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 and orders. During the hearing, the parties discussed the issues between them, turned their minds to compromise and achieved a resolution of a portion of the tenant's dispute.

Both parties agreed to the following final and binding settlement of a portion of the tenant's dispute:

1. The landlord agreed, at its own cost, to contact JC, who is the manager at JSS company recommended by the tenant, by April 20, 2021, and to have the noise issues at the rental unit inspected by a certified, licensed professional by April 30, 2021, and to complete any repair(s) recommended by the professional by May 15, 2021;
2. Both parties agreed that the tenant is entitled to reduce her rent by \$480.00 per month, beginning on the following month after the violation(s) occur, until the above inspection and/or recommended repair(s) occur.

These particulars comprise a full and final settlement of a portion of the dispute for both parties, except for the tenant's monetary claims. Both parties understood and agreed to the above terms, free of any duress or coercion. These terms are legal, final, binding and enforceable, which settles a portion of this dispute, except for the tenant's monetary claims.

The tenant applied for a rent reduction of \$3,600.00 and the \$100.00 application filing fee. I made a decision regarding the tenant's monetary application because the parties were unable to reach a settlement on that claim. Below are my findings.

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began on June 1, 2019. Monthly rent in the current amount of \$3,980.00 is payable on the first day of each month. A security deposit of \$2,150.00 and a pet damage deposit of \$2,150.00 were paid by the tenant and the landlord continues to retain both deposits. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit.

The tenant stated the following facts. She seeks a rent reduction of \$300.00 per month for an unknown disturbance that has been caused by the heat pumps. The noise occurs "every hour or so," is "random," and occurs "all night."

The landlord stated the following facts. The landlord disputes the tenant's monetary claim. The landlord had four HVAC companies inspect the tenant's rental unit, all four said nothing was wrong with the HVAC, and the landlord spent \$1,200.00 for these service calls. The landlord obtained reports saying nothing was wrong with the HVAC. The landlord provided copies of the invoices and reports for this hearing. The landlord is willing to address the noise issue if someone can determine the problem and it can be fixed. The landlord already reduced the tenant's rent by \$320.00 per month, due to the covid-19 pandemic. The landlord looked into the two companies that the tenant provided to him, and they were dispatch companies that referred him to two other companies, where one company said that there was no noise problem and the other company said that they did not know if there was a noise problem.

The tenant stated the following facts in response to the landlord's testimony. She understands the dilemma of the landlord. She received an email from the building owner's representative, who is aware of what is wrong. She gave names of two companies to the landlord. Other suites in the same building have the same problem, the tenant's neighbour had it fixed by a company, and the tenant obtained hearsay knowledge from her. The tenant is not required to find a company to fix the issue, it is the landlord's obligation. The tenant thinks there is a defect in the furnace valve because it was installed backwards.

Analysis of Tenant's Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;

2. Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's application for \$3,600.00, without leave to reapply. I find that the tenant was unable to justify the \$3,600.00 amount being claimed. I find that the tenant failed all four parts of the above test. The landlord disputed the tenant's claims.

The tenant did not provide a breakdown for the \$3,600.00 and why she chose that amount. The tenant simply stated that she wanted \$300.00 per month. She did not indicate for how many months or what time period she was seeking compensation. She did not indicate when the noise issues started, when she notified the landlord of the noise issues, or what specific losses she suffered as a result of the noise.

The tenant did not provide documentary evidence to show that she missed time off work, that she lost any wages, that she suffered medical issues, or that she suffered other losses. She did not provide any work, medical or other records. I find that the tenant failed to provide sufficient evidence that the noise in her rental unit caused her losses, for which the landlord is responsible.

The tenant agreed that the landlord sent four different companies to investigate the noise issues in the rental unit and that nothing was found by these companies. I found that the landlord made best efforts and fulfilled its repair duties under section 32 of the *Act*, to investigate the noise issue and that because no issues were found by the professional companies, there were no repairs that could be made in the rental unit. I find that the landlord was not wilful or negligent in dealing with the noise issues in the rental unit.

The tenant was only successful in her application, based on the repairs that the landlord agreed to do during the hearing. The tenant was unsuccessful in the remainder of her application. Therefore, I find that the tenant is not entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

I order the landlord, at its own cost, to have a certified, licensed professional inspect by April 30, 2021 and to perform repairs if recommended by the professional by May 15, 2021, regarding the noise at the tenant's rental unit. If the landlord fails to do so, I order the tenant to reduce her monthly rent by \$480.00, beginning on the following month after the violation(s) occur, until the inspection and/or recommended repair(s) occur. If the parties disagree as to whether the inspection and/or recommended repair(s) have been properly done, they have leave to reapply at the Residential Tenancy Branch for determination.

The tenant's application for a rent reduction of \$3,600.00 and to recover the \$100.00 filing fee are dismissed 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: April 20, 2021

Residential Tenancy Branch