



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RAYMAR REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR RP FFT

Introduction

The tenant seeks orders for repairs and for a rent reduction, pursuant to sections 32 and 62, and section 65, respectively, of the *Residential Tenancy Act* ("Act"). In addition, the tenant seeks recovery of the filing fee under section 72 of the Act.

Both parties attended the hearing on June 10, 2021. No issues of service were raised by the parties and Rule 6.11 of the *Rules of Procedure* was explained.

Issues

1. Is the tenant entitled to an order for repairs?
2. Is the tenant entitled to an order for rent reduction?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began on November 17, 2018. A copy of the written tenancy agreement is in evidence. Heat is included in the rent, as indicated on page two of the agreement.

Noise is the culprit in this dispute. The tenant testified that the heater makes a ringing noise. The noise is inconsistent, but often constant, when the heater is turned on. During the winter months the noise has been "really bad." It was particularly bad in December 2020 and January 2021 when the heater was turned on more frequently. The noise itself was described by the tenant as a "ringing." There is an echo within the sound, and the noise is high pitched. There is also a "metallic banging" in the sound.

The tenant first noticed the noise in the spring of 2020, but then the pandemic began, everything got shut down, and the issue fell to the wayside. However, she began hearing the noise again in the winter, and the noise persisted for many months. She contacted the landlord who sent in an HVAC technician to try to diagnose the problem. The technician did not hear anything or identify the source of the supposed sound. “He couldn’t figure it out,” the tenant remarked. The situation remained unresolved, and the landlord was “unresponsive.”

Eventually, after further complaints about the noise, the landlord sent in a second technician, who heard noise (though the parties disagreed on what noise, exactly, the technician had heard). The landlord and the technician listened to the walls, checked adjoining rental units, and even went to the roof of the building to see what possible sources might have caused the noise. Nevertheless, months passed and “the landlord never did anything,” explained the tenant. The entire situation was “very frustrating” and, in having to endure the noise, the tenant testified that “it’s basically torture.”

In respect of a remedy, the tenant would like the landlord to repair the heater such that it does not make the noise, and, she seeks \$800.00 in compensation through a rent reduction. The tenant submitted that, while they did not have a concrete explanation as to how they arrived at this dollar amount, she argued that it is unfair that she is paying rent for a noise-making heating system.

The landlord explained that the heating system that might be causing the noise is that of a boiler system which pushes hot water through copper piping; this is how the many rental units in the building are heated. The copper pipes run along the floor and are covered with an enclosure. A tenant turns the heat on or off by opening a valve.

The landlord testified that the first time he became aware of this issue was when the resident manager – who had received the tenant’s initial complaint – brought it to the landlord’s attention. He explained that “the resident manager couldn’t hear any noise and was quite confused.” After a further complaint from the tenant, the landlord sent a heating company (that is, the HVAC company) to come out and have a look. The first heating company individual did not hear the noise that the tenant had complained of. After some investigation, such as checking out the adjacent suite to see if there was a similar problem, the landlord left things where they were at.

After a further complaint, the landlord sent another heating technician (a different technician but from the same company). They were unable to determine the source of the noise, and, indeed, they did not hear the noise.

The landlord testified that he would like to fix the issue but said he cannot fix a noise that he cannot hear. He suggested that there could be other explanations for the noise, including the possibility that the tenant might have tinnitus. Regardless, he said that he is unsure of what the sound is, and, while he does not believe that the tenant is making this whole thing up, he simply does not know what to do about a sound he cannot hear. “I’d love to fix the problem . . . if I knew what the noise is,” he added. In summary, the landlord argued that they should not be liable for a problem that they have not caused or for a problem that they cannot establish.

The tenant submitted into evidence various correspondence with the landlord. Also submitted into evidence were three audio recordings. These files were labelled “Ringing1.m4a” (a 37-second-long recording), “Ringing2.m4a” (a 14-second-long recording), and “NotRingingForComparison.m4a” (a 9-second-long recording). I have listened to all three recordings and will comment upon my findings, below.

The landlord submitted into evidence various documents, including two “time sheets” which are summary reports from the HVAC company. One report is dated January 29, 2021, and the technician writes that “Valve was not making any noise when I arrived.” and “If there is a noise, I could not hear it or determin [sic] any fault in the heating.”

The second report is dated February 16, 2021 and is authored by the second technician. The report includes the following entry: “The Tenant could hear a high pitched noise from the heating area though not as loud as normal. I could not detect any high pitched noise”. Also included in the landlord’s evidence was an email letter from the occupant who resides below the tenant; the occupant writes that “I don’t hear nor haven’t heard any buzzing or high pitch noise coming from the heaters in my apartment.”

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Application for Repair Order

First, I address the tenant’s application for an order for repairs to the heater. [Section 32](#) of the Act is the starting point in any such application, and it states the following:

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.

In this dispute, the tenant complains of a high-pitched ringing noise, which contains an echo or metallic banging characteristic. Resolving the noise issue has been “very frustrating” and having to listen to the noise has been “basically torture” for the tenant. The noise is in her bedroom. The source of the sound appears to emanate from the heater, that is, from the heating pipes running along the floor.

Neither the landlord, the property manager, nor the two HVAC technicians could hear the high-pitched noise. The landlord does not deny that the tenant is hearing these sounds, but, he cannot hear them. Moreover, he cannot fix what he cannot hear.

As mentioned, three audio recordings were submitted into evidence by the tenant. Two of the recordings capture the sound being made when the heater is turned on. The third recording captures the sound in the room when the heater is turned off.

There is, I find – having carefully listened to all three recordings multiple times on high-quality headphones – a very distinct sound present when the heater is presumably turned on. The sound (in the two recordings) could be described as high-, or higher-pitched, akin to the sound of a fluid passing through a pipe, and there are some slight variations in the frequency of the sound. Indeed, the noise is fairly close to how it was described by the tenant, though I did not detect any metallic banging. A slight ambient, or bass sound is also detectable, though this could be the tenant’s movement, breathing, or possibly other exterior sounds such as vehicle traffic. In the third recording, I find that the high-pitched sound is simply not there.

Is there a high-pitched sound present when the heating system is on? Yes. However, the sound that I heard on the recordings is not inconsistent with, or out of the ordinary for, a water pipe heating system. The tenant did not argue, or provide any evidence to support an argument, that the sound she hears is somehow out of the ordinary that would lead me to conclude that the heating system is in need of repairs. Indeed, neither of the two HVAC technicians could find anything wrong with the system.

All of which leads me to conclude that, while there is a sound – much like the one the tenant described and that I heard – the sound is not a result of any fault in the system. Rather, the sound, while irritating to the tenant, is one produced by a functioning heater.

There is, I note, the strong likelihood that the tenant is much younger than the individuals who attended to the rental unit. As briefly touched upon within one of the tenant's letters, it is possible that the older individuals did not hear any high-pitched noise because their ears cannot hear such noise. It is common knowledge that as we age, hearing loss is an ever-increasing likelihood. Finally, it is worth recognizing that some individuals are more sensitive to certain sounds, and, to certain frequencies.

It is for these reasons, after taking into very careful consideration all of the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving that they are entitled to an order for repairs. Accordingly, this aspect of the tenant's application is dismissed.

2. Application for Reduction of Rent

If an arbitrator finds that a landlord has not complied with the Act, the regulations, or the tenancy agreement, [section 65\(1\)\(f\)](#) of the Act permits the arbitrator to make an order "that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement [.]"

In this application, there is no evidence before me to find that the landlord breached the Act, the regulations, or the tenancy agreement. The noise that has plagued the tenant throughout the winter months, while obviously not conducive to the tenant's well-being or comfort, is not, as previously explained, the result of any negligence or wilful misconduct on the part of the landlord. By all accounts, the landlord did everything reasonable to determine whether there was (1) anything faulty with the hot water heating system, and (2) some other explanation for the noise. A landlord cannot be made to compensate a tenant where there is no evidence of the landlord's having breached the Act, the regulations, or the tenancy agreement.

For these reasons, and, taking into careful consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving her claim for a past or future reduction in rent. Accordingly, this aspect of the tenant's application is also dismissed.

3. Claim for Filing Fee

Section 72 of the Act permits an arbitrator to order compensation for the cost of the application filing fee to a successful applicant. As the tenant was not successful in their application, I respectfully decline to award any compensation for the filing fee.

Conclusion

I dismiss the tenant's application, without leave to reapply.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: June 14, 2021

Residential Tenancy Branch