



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) for a monetary order of \$5,350.00 for a retroactive rent reduction due to loss of quiet and enjoyment, plus the filing fee.

The tenant and an agent for the landlord, ET (agent) attended the teleconference hearing. The parties were affirmed and the opportunity to ask questions was provided to both parties. The agents confirmed receiving the tenant's documentary evidence and that the agents had the opportunity to review that evidence prior to the hearing. The agents confirmed that the landlord did not submit any documentary evidence in response to the tenant's application. The evidence of the parties is summarized below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As neither party raised any concerns regarding the receipt or ability to review the documentary evidence or digital evidence from the other party, I find the parties were sufficiently served in accordance with the Act.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

Furthermore, the parties consented to change the name of the landlord from the agent to the actual landlord name, AW. Therefore, pursuant to section 64(3)(c) of the Act, the application was amended to reflect the correct landlord name, AW.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Issues to be Decided

- Is the tenant entitled to a monetary order under the Act, and if so, in what amount?
- If yes, is the tenant also entitled to the recovery of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on December 1, 2019 and reverted to a month to month tenancy after November 30, 2020. Monthly rent was \$1,750.00 per month and was due on the first day of each month.

The tenant's monetary claim of \$5,350.00 is comprised of the tenant seeking the return of 100% of their rent for a period of three months. The tenant does not state which of the three months of the tenancy they are claiming for in their application. Three months of rent at \$1,750.00 per month totals \$5,250.00 with the remaining \$100.00 being for the filing fee.

The major issue for the tenant was the gurgling sound coming from the kitchen sink, which also emitted a sewage smell every day. The tenant also raised the issue of repeated disruptions coming from the Murray Hotel next door and the front door of the rental unit making a rattling sound every time someone else would close their door in the shared hallway. Given the above, I will address the issues as 1. Gurgling sound/sewage smell from kitchen sink and 2. Noise from Murray Hotel. I am not including the sound from the front door or the transparent blind issue as I find the tenant failed to address either issue in their application and that it would be prejudicial to the landlord for me to consider either issue. I also note that RTB Rule 2.9 does not allow a claim to be divided so I dismiss the rattling sound from the front door and the

transparent blinds without leave to reapply, as I find that both issues were not sufficiently described in the application served on the landlord. I do not grant leave to reapply for either issue, based on Rule 2.9.

Gurgling sound and sewage smell from kitchen sink

The tenant described the rental unit as 500 square feet (SF) and that due to the pandemic, they were working from home and were disrupted on a daily basis with a loud gurgling sound coming from the kitchen sink, which also resulted in a bad sewage smell according to the tenant. The tenant also submitted a video which showed at least 11 instances of different loud sounds coming from the kitchen sink and which even with the drain plug closed, could still be heard on the video.

The tenant also provided a “Sink Issue Log”, which sets out the approximate times per day with the date and approximate time of each gurgling sound and sewage smell, with a description for most entries. The total minutes by months I have summarized below for ease of reference:

September 2020:	830 minutes
October 2020:	955 minutes
November 2020:	435 minutes
December 2020:	829 minutes
January 2021:	280 minutes
TOTAL:	3,329 minutes

From the evidence presented by the tenant, the tenant wrote an email to the landlord in December 2019 to advise of what the tenant thought was a clogged sink. The tenant confirmed that an agent had poured something down the drain within a reasonable time; however, a few days later the gurgling sound came back and although the tenant originally thought the problem was rectified, the tenant was disappointed to continue to hear the gurgling on a daily basis. The agent confirmed that while many attempts have been made to fix the “gurgling sound” including a full “line flushing” later in January 2021, the sound continues throughout the building even with the drainpipes being flushed. The tenant also sent a letter to the landlord dated November 23, 2020 requesting a solution by December 7, 2020 or an application would be made to the RTB. That solution never came and as stated above, even after a full line flushing, the kitchen drains throughout the building continue to make a gurgling sound according to the agent. The agent stated that it is the way the pipes are trying to get air so that when

someone uses their sink it makes that sound as the air is trying to escape. The agent was unable to address the sewage smell during the hearing.

The tenant confirmed that they were away in Kelowna due to COVID from mid February 2020 to mid August 2020.

Noise from Murray Hotel

The tenant described many instances of noise coming from the Murray Hotel next door, in addition to seeing someone jump out of the building onto the ground below which according to the tenant was very traumatic. The agent stated that they do not believe the landlord is liable and that the Murray Hotel is not operated by the landlord and they have no control over a neighbouring building and that the tenant is responsible to do their own due diligence before moving into an area with surrounding buildings.

As indicated above, the tenant confirmed that they were away in Kelowna due to COVID from mid February 2020 to mid August 2020.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the tenant to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the landlord. Once that has been established, the

tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Gurgling sound and sewage smell from kitchen sink

There is no dispute that the rental unit is about 500SF in size, so a small rental unit. I accept the tenant's undisputed testimony that they were working from home, except for mid February 2020 to mid August 2020 when the tenant was in Kelowna, and were disrupted on a daily basis with a loud gurgling sound coming from the kitchen sink, and which also resulted in a bad sewage smell according to the tenant. I find the video evidence to be compelling and supports that the gurgling sound was loud and disruptive. I also have no reason not to believe that there was an associated sewer smell from the kitchen sink as it was not disputed by the agent during the hearing.

I also find that the tenant's log totals 3,329 minutes of time where the tenant was bothered or negatively impacted by the gurgling and sewer smell from the kitchen sink.

I find that section 28 of the Act applies which states:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*;

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

[Emphasis added]

Based on the above, I find the landlord breached section 28(b) of the Act by not rectifying the gurgling kitchen issue and the kitchen drain sewage smell issue during the tenancy. I find that the sound and smell described by the tenant is not consistent with the age and character of the building, which obviously shown in the pictures is a near new building, and is not normal noise for such a building, such as a flushing of a toilet from a neighbouring unit as one example. I also find that it is more likely than not a flaw

in the building construction. While I accept the agent's testimony that even after a full line flushing did not resolve the sound or smell from the kitchen sink and that the issue remains unresolved even as of the date of the hearing, July 2, 2021, I find that the monthly rent did not take into account what I find to be an unreasonable disturbance. Therefore, going forward the landlord may wish to advise prospective tenants of the kitchen sink issues in writing within the tenancy agreement to ensure that the any future tenant is aware of these issues prior to entering into a tenancy agreement.

I also find that the tenant is entitled to compensation under the Act for the unreasonable disturbance related to the kitchen sink sound and smell. I don't agree with the tenant in terms of the value of their claim; however. While the tenant is claiming for 100% of the rent to be returned for a period of 3 months, I find the tenant has failed to support how they arrived at that value. I find that the tenant has proven the following reduced value, which is based on the tenant's "Sink Log":

Firstly, the total minutes for September 2020, October 2020, November 2020, December 2020 through to January 15, 2021 (Log Time Period), using 1,440 minutes in one day, equals a Log Time Period of 197,280 minutes (137 days x 1440 minutes). Using the 3,329 minutes from the Sink Log I find that rounding up to the nearest percentage totals 2% of the total time during the Log Time Period that the tenant was impacted by the gurgling sound and sewer smell. In addition, I find that the tenant still had use and enjoyment of the remainder of the rental unit such as use of the bathroom, the remainder of the kitchen, living room, closet(s), bedroom, etc., and that a fair percentage would be 50% of the 2%, which I find to be 1%. Therefore, I find that total rent paid for September 1, 2020 to January 15, 2021 was \$7,875.00 (\$1,750 x 4.5 months) and that 1% of \$7,875.00 equals \$78.75. As a result, I find the tenant has proven that they are entitled to **\$78.75** in the form of compensation for their loss of quiet enjoyment related to the gurgling sink and sewer smell from the kitchen sink. I dismiss any amount higher being claimed due to insufficient evidence, without leave to reapply.

I also dismiss any other time period being claimed as I find that the tenant has not established the impact the gurgling or smell from the kitchen sink impacted them beyond the Log Time Period.

Noise from Murray Hotel

I agree with the agent that the landlord is not responsible for the noise stemming from the Murray Hotel. I also agree with the agent that the tenant failed to exercise reasonable due diligence before renting in a building next to a hotel to determine if the

neighbourhood was a proper fit for their personal needs. I also find that the landlord is not in a position to address noise from a neighbouring hotel and therefore, I find the tenant failed to prove all four parts of the test for damages or loss for this portion of their claim. Consequently, I dismiss this portion of the tenant's claim without leave to reapply, due to insufficient evidence.

As the tenant's claim was partially successful, I grant the tenant **\$100.00** for the recovery of the cost of the filing fee pursuant to section 72 of the Act.

I find that the tenant has established a total monetary claim of **\$178.75** as described above. I grant the tenant a monetary order pursuant to section 67 of the Act in that amount.

Conclusion

A portion of the tenant's application is successful. The tenant is granted a monetary order pursuant to section 67 of the Act of \$178.75. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

The landlord is reminded that they could be held liable for all costs related to enforcement of the monetary order. This decision will be emailed to both parties. The monetary order will be emailed to the tenant only for service on the landlord.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 8, 2021

Residential Tenancy Branch