Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFT, OLC, RP, RR, MNDCT

Introduction

The tenant seeks various relief under sections 32 (an order for repairs), 62 (an order for landlord compliance), 65(1)(f) (an order reducing rent), 67 (an order for compensation), and 72 (recovery of the application filing fee) of the *Residential Tenancy Act* ("Act").

Attending the hearing was the tenant and three representatives of the landlord. One representative was from head office, another was the residential property's previous manager, and the third was the current manager.

The parties were affirmed, no significant service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained.

Preliminary Issue: Lack of particulars for relief under sections 32 and 65(1)(f)

It should be noted that no particulars were provided within the sections of the tenant's application in which an order for repairs and the order to reduce rent were sought.

Section 59(2)(b) of the Act requires that "full particulars" be included in an application for dispute resolution. In the absence of full particulars, it would be procedurally unfair for these specific claims to be considered. As such, the claims for relief under sections 32 and 65(1)(f) are hereby dismissed, without leave to reapply.

Issues

1. Is the tenant entitled to an order under section 62 of the Act?
2. Is the tenant entitled to compensation?
3. Is the tenant entitled to recover the cost of the application filing fee?

Background, Evidence, and Facts

“My life is a living hell,” the tenant explained. From the day he moved into the rental unit on December 24, 2021 until the present day, he has endured around-the-clock noises emanating from the walls of his twelfth-floor apartment. The noises are described as tapping, knocking, “click clack[ing],” and “drip, drip, drip”; the volume is equivalent to someone knocking on the door.

The noises occur about every ten minutes, while the specific duration, volume, and pattern of such noises seem to vary over time. The noises are worse at night. Indeed, the noises are such that they are “more than enough to drive a sane person mad.” Suffering through endless months of interrupted sleep, the tenant awakens each morning greeted by this “fresh hell.”

The tenant submitted several audio recordings of the noises, though he prefaced this evidence by noting that they represent “a pale shadow” of what are, in fact, unbearable sounds. It is the tenant’s position that they are caused by plumbing in the walls. A third party with plumbing expertise told the tenant that these noises are preventable.

On many occasions the tenant contacted the landlord to have the issue fixed, but to no avail. In fact, the tenant has completely lost the ability to tolerate these noises and remarked that he is moving out of the rental unit at the end of this month (that is, at the end of May 2022). Copies of text conversations between the parties were in evidence.

The tenant argued that the landlord has breached his right to quiet enjoyment and freedom from unreasonable disturbance, and the requirement that they provide and maintain the rental unit in a state of decoration and repair that makes it suitable for occupation by a tenant. Based on these ongoing breaches of the Act, the tenant seeks compensation equivalent to a full refund of rent paid since he took occupancy.

The landlord did not dispute that there are noises. Rather, they argue that the noises are caused by elevator relays, and not by anything plumbing related. Professional plumbers were called in and did “everything possible” that they could do to remedy the issues. However, even after much work was done, a ticking noise was still heard—by the plumber hired by the landlord. Another vendor was brought in, who determined that the relays in the elevator might be causing the noises. The elevator company verbally told the landlord that nothing can be done about the noise caused by the elevator relays. (The tenant testified that he was unaware of any report from anyone which found that the elevator relays were the source of the noise.)

Thus, it is the landlord's position that this is something that cannot be "fixed" or changed, and that they have done everything possible to address the issue. Moreover, the landlord representatives testified that some tenants are more sensitive to noise, and that certain noises can lead to an extreme reaction.

Further, the landlord's employees testified that sound and noise can often transfer through a concrete building "very strangely." Sometimes, for example, someone will be making a sound on one floor only for that sound to be transmitted and heard a few floors below. In this case, the elevator and its shaft are located across the hallway from the tenant's rental unit.

A heat pump was installed in the building on February 1, 2022, and the landlord hoped that this might eliminate the noise. However, this hope was short lived. A notarized letter (dated April 20, 2022) submitted into evidence by the landlord and authored by a mechanical contractor who installed the heat pump, includes the following sentence:

> I did notice there was some clacking noise from the elevator machine room in the penthouse elevator machine room. The clacking noise is from the relays of the elevator control system. I asked site building manager [K.] to monitor noise of heating water flow to see if it changes during the day and also the noise of the elevator relays, as it should be changing depending on demand of elevator usage during the day and night.

The tenant argued that the mechanical contractor who authored this letter is not a qualified elevator technician. Moreover, he argued that the landlord never let him know that the source of the noise might be caused by the elevator relays. Nor, he noted, did any technician, elevator technician or otherwise, ever attended to the rental unit to investigate further the potential source of the noise.

Analysis

At the outset, I note that relevant evidence, complying with the *Rules of Procedure,* under the Act, was carefully considered in reaching this decision. However, only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced herein.

Second, it is worth noting that 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. Claim for Compensation

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other party for damage or loss that results. Further, a party claiming compensation must do whatever is reasonable to minimize their loss.

Section 67 of the Act permits an arbitrator to determine the amount of, and order a party to pay, compensation to another party if damage or loss results from a party not complying with the Act, the regulations, or a tenancy agreement. These sections form the basis for initiating a claim for compensation under the Act.

In this dispute, the tenant argues that the landlord breached sections 28 and subsection 28(b) of the Act, which each states as follows:

> A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: [. . .] (b) freedom from unreasonable disturbance;
>
> and
>
> 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.

The tenant submits that the landlord has, by not making reasonable efforts to eliminate the noise, breached these sections. I turn, first, to the second of the claimed breach, under section 32 of the Act.

While the tenant argued that the ongoing noise makes it unsuitable for occupation by a tenant (that is, himself), he did not provide any supporting, documentary evidence in respect of the age, character, and location of the rental unit that are, ultimately, important and crucial factors in determining whether the landlord breached its obligation to provide a rental unit in compliance or non-compliance of the Act. Nor did the tenant provide any evidence that the rental unit specifically, or the residential property generally, does not comply with health, safety, and housing standards required by law.

In short, taking into consideration all the evidence before me, it is my finding that the tenant has not proven a breach of section 32(1)(b) of the Act. Given that no breach of this section of the Act occurred, no compensation may flow.

Regarding the first breach, the tenant argued that he has lost all quiet enjoyment and freedom from unreasonable disturbance since day one of the tenancy. I would agree.

The tenant's descriptions of the noise match those of the recordings. I have listened to all of the various recordings several times with high-quality headphones: the drip, drip, drip, and knocking-like sounds are clear and audible. It is not lost on me that such sounds, being produced almost non-stop around the clock would, by any reasonable standards for any reasonable person, "drive someone mad." They are, I find, causing the tenant's loss of quiet enjoyment and are, I conclude, an unreasonable disturbance.

With respect, I must disagree with the landlord's position that they "made every effort" and did everything reasonable to deal with the problem. This is not to say that the landlord did not make some effort; they brought in plumbers. However, but for the brief reference in the contractor's letter to clicking sounds in the elevator, no other documentary evidence was provided which persuades me to find that the landlord took that additional, and necessary step in trying to resolve the noise issue.

Further, there is no documentary evidence of any qualified elevator technician attending to the tenant's rental unit and determining first-hand that the noise might, in fact, be caused by the elevator relays. Perhaps they are caused by elevator relays, but other than a third party's reference in a letter, there is no evidence that this is the case.

As an aside, common sense would lead one to expect that elevator-related noise frequency to decrease into the night and early morning hours. Elevator use, after all, ebbs and flows over the course of a day. In this case, however, the noise appears to be nearly constant at all hours of the day. This raises the question of whether the sounds can, in fact, be wholly attributable to the elevator. (If they are, then perhaps the relays themselves need repair.)

In summary, taking into careful consideration all the evidence before me, it is my finding that the tenant has proven, on a balance of probabilities, that the landlord has breached section 28 of the Act in respect of the landlord's obligation to ensure the tenant' right to quiet enjoyment and the freedom from unreasonable disturbance.

As the noises have continued since the start of the tenancy, given the significant impact on the tenant's health and well-being, and considering the landlord's less-than-reasonable efforts at resolving the source of the breach, it is my finding that the tenant's claim for compensation equal to approximately four months of rent to be a reasonable claim for compensation in the circumstances (January 1, 2022 to May 5, 2022).

The tenant took reasonable steps to minimize his losses, but the landlord, for its part, did not. In total, the tenant is awarded $7,025.30. (This is calculated at $1,687.00 per month x 4 months, plus $55.46 per diem for May 1 to May 5, inclusive.)

The tenant is awarded an additional $100.00 in compensation to pay for the cost of the application filing fee, pursuant to section 72 of the Act.

Pursuant to section 67 of the Act the landlord is ordered to pay to the tenant $7,125.30. A monetary order in this amount is issued in conjunction with this decision to the tenant. The tenant must serve a copy of the monetary order on the landlord.

2. Application for Order for Landlord Compliance

For the reasons outlined above, I am persuaded that the landlord has not complied with the requirement to ensure the tenant's rights to quiet enjoyment or freedom from unreasonable disturbance have been met. To this end, the landlord is ordered (under section 62(3) of the Act) to make all reasonable efforts to determine the source of the noise which continues to affect the tenant, and, to make reasonable efforts to end the noise at the earliest, reasonable opportunity.

Conclusion

For the reasons given above, the application is granted, in part.

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

Dated: May 6, 2022

Residential Tenancy Branch