



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, RR, FT

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to be allowed to reduce rent for repairs, services and facilities agreed upon but not provided and for compensation for monetary loss or other money owed, related to the above repair and to have the landlord comply with the Act.

Both parties appeared.

On April 12, 2022, the parties were at a hearing as the tenant had applied to have emergency repairs made to HVAC system. On April 13, 2022, the Arbitrator found the following,

” Further, **I find there are no repairs that can be made in this situation.** I find the Landlord rectified the situation to the best of their ability by setting a timer on the unit. The Tenant did not sufficient provide evidence to show this did not occur in like fashion. Aside from this I find the Landlord has been diligent in following up on the Tenant’s queries throughout and attempting to resolve the situation. In sum, there is no repair that can be made, aside from a major renovation to remove the HVAC unit and I am not satisfied of the need for that”.

[Reproduced as written]
[My Emphasis added]

On August 20, 2021, the parties were at a hearing as the tenant had applied to have repairs made to HVAC system and to be allowed to reduce rent for repairs in form of a monetary compensation. On August 27, 2021, the Arbitrator found the following,

“In this case, the tenant seeks an order that the landlord make repairs to the HVAC system, however I accept the testimony of the landlord’s witness that it is possible to move the HVAC system to another area of the building, but that would require a lot of work, and I am not satisfied that the tenant has established that the landlord should go to that extent or cost. The landlord took steps after becoming aware of the problem by re-setting the timer and calling in an HVAC professional. **I see no other repair that the tenant has proven is required, and I dismiss the tenant’s application for an order that the landlord make repairs to the rental unit or property.**

The tenant has also applied for an order reducing rent for repairs, services or facilities agreed upon but not provided. The landlord offered 2 options to assist the tenant: to move to another unit, but for higher rent; or end the tenancy without penalty. The tenant testified that had she known of the noise, she never would have rented the unit.

I have reviewed all of the evidence, including the audio recording which sounds like a fan running, and is not a truck across the street. I cannot, in the circumstances find that reducing rent or providing the tenant with compensation will satisfy the complaint of noise. Nor can I be satisfied that any reduction in rent is warranted. The tenant testified that rather than reducing rent by 50% the tenant claims compensation, which can only be granted in the event that I find that the landlord has failed to comply with the Act or the tenancy agreement. There is no evidence of that, considering that the landlord took the steps outlined above in an attempt to find a solution. The decimeter found that noise was within the reasonable range, and I dismiss the tenant’s application for a reduction in rent or compensation”.

[Reproduced as written]
[My Emphasis added]

In this case, the tenant has now filed a third application, again applying for rent reduction for repairs needed to the HVAC for the same issue, noise. However, this issue had already been determined at two previous hearing that no repairs are needed to the HVAC, and no breach of the Act was found by the landlord.

I find this matter has already been heard and considered on two occasions and no breach has been found by the landlord. I find the principles of res judicata would apply

as this is meant to ensure the finality of a decision and to protect parties from multiple hearings involving the same issue. Therefore, I dismiss the tenant's application without leave to reapply.

Conclusion

The tenant's application is 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: July 19, 2022

Residential Tenancy Branch