



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, RP, OLC

Introduction

The Tenant seeks the following relief under the *Residential Tenancy Act* (the “Act”):

- An order pursuant to s. 32 for repairs to the rental unit;
- An order pursuant to s. 65 for a rent reduction;
- An order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- An order pursuant to s. 67 for monetary compensation.

N.M. appeared as the Tenant. S.C. appeared as agent for the Landlord.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The parties advise that they served their application materials on the other side. Both parties acknowledge receipt of the other’s application materials without objection. Based on the mutual acknowledgments of the parties without objection, I find that pursuant to s. 71(2) of the *Act* that the parties were sufficiently served with the other’s application materials.

Issues to be Decided

- 1) Should the Landlord be ordered to undertake repairs?
- 2) Is the Tenant entitled to past and/or future rent reduction?
- 3) Should the Landlord be ordered to comply with the *Act*, Regulations, and/or the tenancy agreement??

4) Is the Tenant entitled to monetary compensation?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenant took occupancy of the rental unit in September 2020.
- Rent is currently payable in the amount of \$1,649.00, which is due on the first day of each month.
- The Landlord holds a security deposit of \$812.50 in trust for the Tenant.

A copy of the tenancy agreement was put into evidence by the Tenant.

The Tenant alleges that when the building's heating system is in use she can hear a loud banging noise coming from the radiators. The Tenant indicates that she first discovered the noise within her rental unit in May 2021 and notified the Landlord of the issue at that time. She says that shortly thereafter the heating was turned off for the summer months but that the noise returned when the heat came back on in September 2021. She says that the noise was present from September 2021 until June 2022. Again, no noise was heard in July or August 2022 as the heat was not turned on.

The Tenant advised that she is friendly with the occupants of the adjacent rental units and testified that they attempted to adjust their heating systems such the noise could be addressed. The Tenant says that this provided no relief.

The Tenant testified to notifying the Landlord with respect to the noise issue on several occasions. The Tenants evidence includes written submissions indicating that the first request sent to the Landlord pertaining to the noise issue was on May 7, 2021 and the latest being made on March 30, 2022.

The Landlord's agent stated that, as a general rule, the Landlord responds to maintenance requests in a timely manner. The Landlord's agent further testified that tradespeople have attended the rental unit. I was advised that a control valve was replaced. The Tenant indicates a plumber has attended twice, the first time in May 2021

and the second time in November 2021 and that on the second visit the plumber was at the rental unit for 2 minutes.

The Landlord's agent indicates that on one occasion an employee went to the rental unit immediately upon being notified that the noise was present by the Tenant. On that occasion, the Tenant was not present in the rental unit. I am told the employee entered the rental unit and did not hear anything on that occasion. The Landlord's evidence includes an email exchange between the Landlord and Tenant with respect to the employee's attendance within the rental unit.

The Tenant's evidence includes various witness statements. One statement from J.L. dated June 6, 2022 indicates that she has attended the rental unit and has heard "banging noises" coming from the heating system. Another from M.F. dated April 12, 2022 indicates that "I have witnessed unusual loud banging noises coming from the heating pipes."

The Landlord's agent argued that the Tenant's witness statements generally lack direct observations and appear to have been created based on second hand knowledge. He says that one of the statements is from a tradesperson living in another country.

The Tenant's evidence also includes audio and video evidence detailing alleged noises coming from the heating system. The Landlord's agent argued that the audio recordings are difficult to verify as it is unclear where they are recorded. The Landlord's agent did not raise similar issue with the Tenant's video evidence, though argues some of the noise seems to be attributable to the normal operation of the heating system. The agent also argued that the noise could be from a neighbouring rental unit.

The Landlord's agent emphasized that if the problem could be found, the Landlord would fix it. However, the Landlord's agent emphasized no problems have been found. It was further argued that the residential property is large with hundreds of tenants. The Landlord's agent says that the only person who complains of noise within the rental unit from the heating system is the Tenant. The Landlord's agent further advised that the nearest mechanical room is some floors and distance from the Tenant and that none of the tenants living between the mechanical room and the Tenant have made a complaint.

The Landlord's agent advises that the building was constructed in 1963, though the heating system was most recently updated approximately 7 years ago. I am told that the new system operates quiet pumps.

The Tenant testified that the noise has disrupted her sleep, which has prompted her to purchase various devices to either cancel the noise or provide white noise to drown out the banging. The Tenant advises that she traveled to another country to spend time with her family such that she could get some sleep. The Tenant argued that traveling to her family was cheaper than getting a hotel within the community.

The Tenant seeks compensation of \$2,400.00 for the costs of these various items and for her flight to get some sleep. The Tenant's evidence includes a cost breakdown of this claim, indicating the total cost of the various items and the flights was \$4,711.87, of which the claim is for \$2,400.00.

The Tenant also seeks past rent reduction of \$1,600.00 for each month the noise was present and future rent reduction of \$1,600.00 for each month until the noise issue is dealt with. The Tenant argues that the noise from the heating system has infringed upon her right to quiet enjoyment under s. 28 of the *Act*.

Analysis

The Tenant seeks various orders under the *Act* related to alleged noise coming from the heating system.

Looking first at the claim for repairs, s. 32 of the *Act* imposes an obligation on a landlord to maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law and, having regard to the age, character, and location of the rental unit, make it suitable for occupation for a tenant.

There is no argument that the heating system is not functioning. It is providing heat to the rental unit. The Tenant's argument is that the heating system produces an unreasonable noise within the rental unit when it is in use.

I have reviewed the audio and video recordings provided by the Tenant. The Landlord argues the accuracy of the audio recordings, though does not make the same argument with respect to the video. In the Tenant's video evidence, an intermittent knocking noise can be heard. Further, the witness statements of J.L. and M.F. clearly state they have

been to the rental unit and have heard the noise in question, which clearly refutes the Landlord's argument that the Tenant's witness statements are all second-hand accounts. I accept that the heating system does create some noise, though the extent to which that noise is excessive is unclear.

Based on the evidence before me, it is difficult to ascertain whether a maintenance issue is present at all. There is no dispute that the Landlord has retained a tradesperson who attended the rental unit and undertook repairs by replacing a valve. A tradesperson attended on a second occasion. The Tenant provided submissions with respect to potential issues and causes. However, the Tenant is not a tradesperson. The Tenant's evidence includes opinions from others with respect to the potential cause of the noise. However, none of opinion evidence provided by the Tenant respecting the cause of the noise indicate that those individuals have actually attended the rental unit to assess the functioning of the heating system.

It appears that the Tenant is conflating a heating system that operates silently with one that is not properly maintained. Section 32 is clear that a landlord's maintenance obligations must be considered with regard to the age, character, and location of the rental unit. The building was constructed in 1963. It is unreasonable, in my view, for the Tenant to expect the heating system in an older building to operate silently without noise. Based on the evidence before me, the Landlord has taken reasonable steps by having tradespeople attend the rental unit to ascertain whether a maintenance issue is present. A repair was undertaken, and no further issue has been found.

I find that the Tenant has failed to establish that the Landlord breached its obligation under s. 32 of the *Act*. This portion of the claim is dismissed.

The Tenant's claims for a rent reduction under s. 65, monetary claim under s. 67, and order that the Landlord comply under s. 62 all require a specific finding that the Landlord failed to comply with its obligations under the *Act*, Regulations, or the tenancy agreement.

As mentioned about, I find that the Tenant has failed to establish a breach under s. 32 of the *Act*. Looking at the claim that the Landlord has breached the Tenant's right to quiet enjoyment, s. 28 of the *Act* sets out a tenant's right to the quiet enjoyment of their rental unit. These include the right to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to

enter the rental unit as set out under s. 29, and the right to use common areas for reasonable and lawful purposes, free from significant interference.

The Tenant argues that the noise from the heating system is disturbing her sleep. However, as mentioned above, it is unreasonable to expect a silent heating system within an older building.

Further, the Landlord argues that if the noise was as loud as alleged by the Tenant, others within the residential property would have also complained. The Landlord's agent asserts there have been no other complaints from hundreds of other tenants. The Landlord's argument is persuasive as I would expect other tenants would also raise issue with noise from the heating system if it were excessive. Indeed, in the Tenant's submissions, she asserted that she is friendly with the occupants of the neighbouring rental units and that they have attempted to adjust their heating to address the noise within the Tenant's rental unit. The Tenant's evidence does not include statements from the neighbouring occupants asserting their heating systems are excessively noisy.

The Tenant's video evidence registers the noise of what appears to be geese and gulls flying outside the building. The noise from the birds flying past the building registers a similar level of noise as the noise identified by the Tenant as coming from the heating system. The Tenant's video evidence suggests that the heating system creates a level of noise similar to that of birds outside the building. This does not constitute an unreasonable level of noise.

I find that the Tenant has failed to establish that noise coming from the heating system constitutes an unreasonable disturbance under s. 28 of the *Act*.

The Tenant's application mentions a breach of s. 29, which pertains to the Landlord's right of entry in the rental unit. The Tenant made no submissions with respect to this alleged breach at the hearing. During the hearing, the Landlord's agent hypothesized that the Tenant is claiming a breach of s. 29 when its employee entered the rental unit to listen for the noise upon being notified by the Tenant that it was present. However, that is unclear to me that this was the alleged breach as the Tenant made no submissions on this point. It is the Tenant's claim. She bears the burden of proving it. I find that by failing to make submissions on an alleged breach of s. 29 at the hearing, the Tenant has failed to show that the Landlord improperly entered the rental unit.

As the Tenant has failed to make out that any breach of the *Act*, Regulations, or tenancy agreement took place, I find that she has failed to make out her claims under ss. 62, 65, and 67.

The Tenant's claim is dismissed without leave to reapply in its entirety.

Conclusion

The Tenant has failed to establish that the Landlord breached its obligation to repair the rental unit or her right to quiet enjoyment. The Tenant has failed to establish that the Landlord has breached the *Act*, Regulations, or tenancy agreement at all.

The claims in the Tenant's application are dismissed without leave in their entirety.

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: August 17, 2022

Residential Tenancy Branch