



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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A matter regarding LUMINA CONO
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes: ERP FFT

Introduction

The tenants seek an order for emergency repairs under sections 32(1) and 62(3) of the *Residential Tenancy Act* (the “Act”). They also seek recovery of the application filing fee pursuant to section 72(1) of the Act.

Issue

Are the tenants entitled to an order for emergency repairs?

Background and Evidence

In reaching this decision, I carefully considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issue of the dispute and explain the decision is included below.

The tenancy began on August 8, 2022 and monthly rent is \$4,950.00. The tenancy is a fixed-term tenancy due to end on August 31, 2023. The rental unit is a three-storey townhome with a roof terrace.

In their application for dispute resolution, filed December 7, 2022, the tenants provided the following particulars:

We are having 2 issues, the first issue is not having adequate coverage for the fire alarm system (tied into the electrical system), alarm devices sounding off at random due to faulty devices, and the fire panel in constant trouble state causing it to beep all night. The issues are creating an inhabitable space. The second issue is no heat, our primary heating system is non-operational.

In the hearing, the tenant (R.R.) testified under oath that the remedy he ultimately seeks is a termination of the tenancy.

And, he seeks to recover as much compensation as possible due to the above-noted issues. The heating issue has lasted four to five weeks, and it did not appear to be resolved when he and his family left for vacation on December 21. The temperatures have averaged 17°C on the townhome's first floor and 15°C on the second floor. In the past month the temperature has never exceeded 15°C on the second floor.

The tenant testified about the fire alarm issue, noting that the constant beeping is causing mental health issues. He explained that the alarm is beeping two to three times every 24 hours, at various and random times throughout the day and night. The noise is significant: 85 dB at ten feet. "It'll run you right out of the building," the tenant added. And, while the concierge can silence the beeping, this can only be done between 8 AM and 8 PM. Outside of this time nothing can be done. The tenant reiterated that this is why he wishes to end the tenancy, before "my family goes insane."

The landlord's representative stated that the landlord was not looking to terminate the tenancy. The landlord is aware of the problems with the heat and the alarm system. Regarding the heating, they have determined the source of the problem (a fitting which sprang a leak, which has resulted in a pressure drop and a temperature drop). They have ordered and received a new compressor. However, they have to wait until the temperature goes above 0°C before they can install the compressor. There are several units tied to the heating system. The landlord added that he is confident that the problem will be "one hundred percent fixed within a few days."

Regarding the fire alarm issue, the landlord has made a lot of inquiries. Unfortunately, the system is designed and largely maintained by an external company. The strata are also the entity that manages the system. The representative testified that the fire alarm system is basically not within the landlord's control. While the representative could not comment on how annoying the beeping is, it is the landlord's intent to have their tenants satisfied with their property. But the alarm system is outside their control. They will continue to investigate to find a solution to the beeping.

Analysis

This application is for an order for emergency repairs. An arbitrator's authority to issue such an order is based on subsections 32(1) and 62(3) of the Act. Section 32(1) of the Act requires a landlord to 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.

Section 62(3) of the Act states that an arbitrator “may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”

Based on the evidence before me, I am satisfied that the landlord has taken prompt and appropriate action to repair the heating system failure. The necessary component has been ordered and is expected to be installed within a few days, which should restore full functionality to the heating system. As temperatures in the Lower Mainland are expected to rise above freezing by December 24, I do not believe that an order against the landlord regarding the heating system is necessary or warranted at this time.

I understand that the constant, loud beeping of the fire alarm system has been frustrating for the tenants. However, upon a careful review of the situation, I am satisfied that the issue is largely beyond the control of the landlord. The best course of action for the landlord has been to communicate with the strata and building manager and request that they resolve the issue. While it is not in the landlord's financial interest to allow the problem to persist (because they could lose a paying tenant), I do not believe there is much more that the landlord can do in this situation. The source of the beeping is outside their control. I recognize the impact that this issue has had on the tenants, but unfortunately, it is a complex situation that requires the cooperation of multiple parties.

Further, after carefully reviewing the relevant legislation and the facts of this case, I have determined that an order terminating the tenancy would not be an appropriate remedy. As previously discussed during the hearing, the circumstances of this case do not warrant such a measure.

Given the above findings and having carefully considered all of the oral and documentary evidence before me, I find that the tenants have not proven the relief sought. Namely, for an order under sections 32(1) and 62(3) of the Act. The tenants' application is therefore dismissed without leave to reapply. This includes the claim for recovery of the filing fee under section 72 of the Act.

That having been said, should the problems persist, the tenants retain the right to end their tenancy under subsection 45(3) of the Act. They also retain the right to make an application for dispute resolution if they believe that they are entitled to monetary compensation, under sections 7 and 67 of the Act.

Conclusion

The application is hereby dismissed, without leave to reapply.

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

Dated: December 24, 2022

Residential Tenancy Branch