

DECISION

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- An order for past rent to be reduced by an amount equivalent to a reduction in the value of the tenancy agreement, due to a breach of the Act, pursuant to section 65.
- an order for the landlord to make repairs to the rental unit under sections 32 and 62 of the Act
- authorization to recover the filing fee for this application from the landlord under section 72 of the Act

Tenant W.W. attended the hearing for the tenant and was represented by his counsel, K.Y.

Landlords M.L. and C.C. attended the hearing for the landlord.

Service of Notice of Dispute Resolution Proceeding (Proceeding Package)

The landlord(s) acknowledged service of the Proceeding Package and I find the landlord duly served in accordance with the Act.

Partial Settlement Reached

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, turned their minds to compromise and achieved the following resolution of one of the issues in the tenant's application with the following terms:

1. The Landlord will either do the repairs as noted on the service safety inspection letter from BC Furnace & Air Conditioning Ltd. dated July 31, 2023 or replace the furnace as required. This will be done by August 31, 2023.
2. The tenant's application seeking an order to repair the dining room light is dismissed with leave to reapply.

Both parties testified that they understood and agreed that the above terms are legal, final, binding and enforceable, which settle this aspect of this dispute. As the parties resolved this issue by agreement, I make no findings of fact or law with respect to this portion of the application.

Issue(s) to be Decided

Is the tenant entitled to an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

Evidence was provided showing that this tenancy began on March 1, 2023, with a monthly rent of \$3,200.00, due on first day of the month, with a security deposit in the amount of \$1,600.00.

The tenant's counsel gave the following submissions. The furnace makes noise when in operation and has caused sleep disruption for the tenant and his family. The quality of the tenant's family's lives have been diminished and the tenants should be compensated at \$1,000.00 per month for the months the furnace was in operation, from March to May 2023.

The tenant notes that the day before the tenancy began, the landlords had the furnace inspected. This implies that the landlord knew there were preexisting issues with the furnace. In evidence, the tenants provided a video of the furnace when running which counsel describes as a rattling from a wobbly motor pulley. The tenant points to a letter from the occupant of the lower unit who has a similar complaint.

The landlords testified that the complaint isn't really that of the tenant, but of the lower unit occupant who the landlord describes as unusually frugal. This occupant is overly concerned about the running of the forced air heater as it causes the gas utility bill to go up.

There is nothing unusual about the sounds of the furnace, just a sound of the ducting contracting and expanding as they heat or cool. This is a 45 year old house and those sounds are to be expected. The furnace is located on the ground floor and the sounds are natural under the circumstances.

Analysis

Is the tenant entitled to an order for past rent to be reduced for the landlord's failure to comply with the Act?

It appears that the tenant seeks compensation for the landlord failing to provide quiet enjoyment of the unit pursuant to section 28.

Residential Tenancy Branch Policy Guideline 6 notes that a landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA. In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

The party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this matter, the tenant must provide sufficient evidence to satisfy me that there has been a substantial interference with his lawful enjoyment of the premises caused by a noisy furnace. I find the tenant has failed to do so.

I have viewed all the videos presented by the tenant to substantiate his claim. While I accept the furnace repairman's diagnosis of the problems with the furnace, I do not find an extraordinary or substantial noise as alleged by the tenant. The only audio evidence of the noise from the furnace is video_001.mp4, which was taken with the cover of the furnace taken off and recorded a foot away from the source of the noise. While the noise may be disturbing a foot away from the camera, I cannot conclude that the sound is extraordinary or substantial throughout the rental unit. An audio recording taken from the tenant's bedroom at night would have been more suitable evidence, however this was not provided for the hearing.

While the tenant argues that his well being was deprived, I have very little evidence from the tenant to corroborate this. I find insufficient evidence to determine that the tenant's quiet enjoyment was deprived or the degree of deprivation the tenant seeks to prove. No medical reports of loss of sleep or prescriptions for sleeping pills or any other corroborative proof of the alleged consequence of the noisy furnace were provided. As stated previously, the onus to prove their case falls to the applicant.

The tenant seeks to be compensated at \$1,000.00 per month for the loss of quiet enjoyment without providing any means to substantiate how he arrived at that figure. The tenant did not provide any similar cases where compensation was awarded to justify this amount of suitable compensation. I would be unable to grant compensation as sought without any scale to base my decision upon or case law to guide me, even if I did find the tenant's right to quiet enjoyment was breached.

I find the tenant has provided insufficient evidence to satisfy me his right to quiet enjoyment of the rental unit has been breached. Consequently, I dismiss this portion of his application.

Is the tenant entitled to recover the filing fee for this application from the landlord?

As the tenant was not successful in their application, I find that the tenant is not entitled to recover the filing fee paid for this application under section 72 of the Act.

Conclusion

The following conditions of settlement were recorded pursuant to section 63 of the Act:

1. The Landlord will either do the repairs as noted on the service safety inspection letter from BC Furnace & Air Conditioning Ltd. dated July 31, 2023 or replace the furnace as required. This will be done by August 31, 2023.
2. The tenant's application seeking an order to repair the dining room light is dismissed with leave to reapply.

The remainder of 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: August 12, 2023

Residential Tenancy Branch