



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

RR, OLC, RP, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant seeking an order for repairs and that the tenant be permitted to reduce rent until the repairs were completed. Both the landlord and the tenant appeared and each gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Whether the tenant has proven to be entitled to an order for repairs.
- Whether the tenant can reduce the rent pending the landlord's compliance.

Background and Evidence

The tenancy began in January 2006 and the rent is \$1,165.00. The tenant testified that over the last four years the tenant's quiet enjoyment has been disturbed by banging from the heat pipes which the tenant described as loud and alarming. The tenant testified that these sounds occur when the heat is on and this happens on an hourly basis. The tenant testified that the sound does not emanate from his suite, but that the heating pipes apparently pass by inside the ceiling to the boiler. The tenant acknowledged that repeated attempts have been made by the landlord to rectify the problem by replacing parts, but this has not eliminated the problem. The tenant pointed out that the noise has been witnessed by the building manager and that other units in the part of the building affected are also being disturbed.

The landlord testified that it was aware of the complaints and the problem for a year and it has engaged qualified plumbing professionals to make repairs. The landlord had submitted evidence that on July 15, 2010, a heating specialist had attended and replaced the circulation pumps and considered the problem to be completely fixed. The landlord pointed out that it has taken action and met its responsibility under the Act.

Analysis

I find that section 32 of the Act imposes responsibilities on both the landlord and the tenant for the care and cleanliness of a unit. A landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, having regard to the age, character and location of the rental unit to make it suitable for occupation by a tenant. A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

In regards to ensuring that the heating system was functional, under the Act this would be one of the landlord's responsibilities and the expectation is that pipes will be maintained, repaired or replaced as necessary without undue delay by the landlord. I find that the evidence would indicate that the landlord did not ignore the problem but made honourable attempts to have it fixed as required under the Act.

In addition to the above, it would appear that the problem may have been resolved once and for all. However, this cannot be verified until the heating system is reactivated in the cold weather. Based on his prior experiences, the tenant expressed doubt that the latest repair efforts will prove successful. That being said, the landlord has made a commitment to take immediate action in future should the banging recur. I am not prepared to issue an order to comply with the Act or make repairs at this point.

I find that for quite some time the tenant has endured noise from banging of the pipes and whether or not this is an issue that falls under section 32, I find that section 28 of

the Act protects a tenant's right to quiet enjoyment. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable, lawful purposes, free from interference.

I find that at the present time the landlord is not in violation of this section. However, should the noise start up again, the landlord is aware that this may serve to devalue the tenancy and an abatement may be justified. The landlord made a commitment that if the banging returns in future and the repairs do not immediately resolve this issue, the landlord would be prepared to permit the tenant to transfer to another unit in a quieter area of the building and will waive the transfer fees.

Given the above, I find the dispute has been resolved. If this problem does arise again for the tenant, I find that the tenant is at liberty to make application to seek a resolution or demand compensation under the Act.

Conclusion

Based on the above, I find that the parties have tentatively resolved the tenant's complaint and therefore no order will be issued. If any future disputes arise that cannot be resolved by the parties in regards to this repair issue or any other matter, the tenant is at liberty to make application for dispute resolution.

The tenant is entitled to be reimbursed the \$50.00 cost of this application and I order that the tenant reduce the next rent payment owed to the landlord by this amount.

September 2010
Date of Decision

Dispute Resolution Officer