



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Concert Properties
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OLC, RP, RR, FF

Introduction

This hearing dealt with an application by the tenants for an order compelling the landlord to comply with the Act and perform repairs and an order authorizing them to reduce their rent. Both parties participated in the conference call hearing.

Both parties provided documentary evidence to the Residential Tenancy Branch. The landlord also served their evidence on the tenants in accordance with the requirements of the Act, but the tenants did not serve their evidence on the landlord as they were unaware that they were required to do so. At the hearing, I advised the tenants that their documentary evidence would not be considered as the landlord had not had opportunity to review that evidence.

Issues to be Decided

Should the landlord be ordered to comply with the Act?
Should the landlord be ordered to perform repairs?
Should the tenants be authorized to reduce their rent?

Background and Evidence

The parties agreed that the tenancy in question began in or about 2005. The tenants live on the 9th floor of the residential property and the matter at issue is the noise produced by a fan located on the ground floor. The fan extracts fumes from the parking area and runs intermittently throughout the day.

The tenants testified that the fan causes an extreme amount of noise and that at one time it would start running between 6:30 and 7:00 a.m. on weekends, which would disturb the tenants. After having received complaints from the tenants, the landlord changed the start time for the fan to an hour later. The tenants testified that they find the noise from the fan extremely disturbing and they are unable to keep their windows

or patio doors open because it creates such a disturbance. The tenants reported the issue to the municipality. The tenants suggest that sensors be installed so the fans do not run on a timer, but rather engage only when extraction of fumes is required. The tenants acknowledged that within the last 2 weeks, the fan has been significantly less noisy.

The tenants provided a witness, L.T., who lives in another building and whose second floor apartment is situated close to the fans. L.T. testified that the fan has always been a source of significant disturbance to her but stated that within the last few weeks, the noise level has reduced to half of what it was before.

The landlord testified that the tenants are the only residents of the building who have complained about the noise of the fans. She testified that a city worker conducted a noise test and that while the maximum allowable noise level is 70 decibels during the day and 65 decibels during the night, the noise level as recorded at the property line on August 23 was 63 decibels.

The landlord further testified that approximately 2 weeks before the hearing, a technician checked the carbon monoxide level in the parking area and determined that the speed of the fans could be reduced by 25%. This reduction of speed resulted in a reduction of noise.

The tenants seek an order that the landlord take measures to further reduce the noise level of the fans and to install sensors. They also seek a reduction in rent until the noise problem is abated and the recovery of the filing fee paid to bring their application.

Analysis

Section 32(1)(a) of the Act requires the landlord to maintain the residential property in a state of repair that complies with the health, safety and housing standards required by law and section 28 protects the tenants' right to quiet enjoyment, which includes freedom from unreasonable disturbance.

In order to be successful in their claim for an order compelling the landlord to comply with the Act and perform repairs, the tenants must prove both that repairs are required because their quiet enjoyment has been infringed upon and that they have made requests of the landlord to perform those repairs. I am satisfied that the tenants have made requests that repairs be performed. In order to prove their claim for a reduction in rent, the tenants must prove that repairs are required and that the loss of quiet enjoyment resulting from the landlord's failure to perform repairs is compensable.

While I find it unusual that the tenants, who reside 9 floors above the fan, are the only building residents who have complained to the landlord, I accept that they have experienced some disturbance from the fan. The question before me is whether that disturbance was unreasonable. The tenants did not dispute that none of the other tenants in the building have complained to the landlord and I find it likely that had the noise from the fan been unreasonably loud, other tenants would have complained.

I accept that L.T. has been disturbed, but the landlord is not obligated to protect L.T.'s quiet enjoyment and I find it entirely possible that the fan is situated in such a way that more noise travels in the direction of L.T.'s building than toward the building it services.

The fact that the landlord has caused decibel readings to be taken and has arranged for a technician to find a way to reduce the noise level of the fan does not prove that the fan was unreasonably loud. Rather, it shows that the landlord takes complaints seriously and attempts to resolve issues even if in the landlord's opinion the complaints may not be completely reasonable.

Having reviewed the evidence before me, I am not satisfied that the tenants have been unreasonably disturbed by the fan and for that reason, I dismiss their claim in its entirety.

Conclusion

The claim is dismissed.

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: October 22, 2013

Residential Tenancy Branch

