



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RP, RR

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order that the landlord make repairs to the rental unit or property and for an order reducing rent for repairs, services or facilities agreed upon but not provided.

The tenant and the landlord named in the application attended the hearing. An agent for the landlord, and the landlord named in the application each gave affirmed testimony, as well as 1 other witness. The parties were given the opportunity to question each other and the witness and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the tenant established that the landlord should be ordered to make repairs to the rental unit or property?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The tenant testified that this fixed term tenancy began on November 1, 2020 and reverts to a month-to-month tenancy after October 31, 2021 and the tenant still resides in the rental unit. Rent in the amount of \$1,200.00 is payable on the 1st day of each month, in addition to extra fees for parking and storage, and there are no rental arrears.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment on the 2nd floor of a complex that contains about 12 floors.

The tenant further testified that she lived in a different unit to begin with and moved to this unit on November 1, but no one mentioned that the HVAC is next to the only window in the rental unit. It wakes the tenant up and disturbs her quiet enjoyment of her rental home. The tenant asked the landlord to fix the noise issue in November and again in January, 2021. Then it became more frequent in April. On May 10, 2021 the tenant wrote to the landlord and to another person who manages the building. Someone went to see the HVAC but didn't hear any noise and didn't agree with the tenant's requests.

The noise is still bothering the tenant and the issue has not been resolved. The tenant sought reduction of rent in emails to the landlord by 50% but now seeks compensation of \$4,125.00 for not being able to sleep or study and loss of quiet enjoyment. Nothing was done to resolve the issue. Originally, the landlord's agents told the tenant that they would put something around the HVAC system to muffle the noise, but that has still not been done. They put a timer on it from 8:00 a.m. to 7:00 p.m., meaning that the machine turns off at 7:00 p.m., but then changed it to turn off at 5:00 p.m., and now it's not on a timer at all.

The landlord's agent (SG) testified that the tenant's first complaint was received in February, 2021, and a technical services manager arrived from Vancouver to try to determine the noise. The technicians went at 6:30 a.m. in April with a device and found that the sound was within the acceptable range. However a big truck across the street starts every morning at 6:30 a.m. which is directly across the street, and it is left running for awhile. They didn't enter the rental unit but went directly to the HVAC machine at 6:30 a.m.

On May 12, 2021 the HVAC system was serviced, and the landlord's agents thought they could wrap it, but the technician said that it would make little to no difference. The timer was changed so that the system would only run during the day from 6:30 a.m. to 7:00 p.m.

The tenant was given the option to move to another suite for similar rent or to end the tenancy early without penalty, but now the complex is at 100% capacity so there are no other suites available.

The landlord (CL) named in the tenant's application is a property manager and does not live on the property.

The HVAC system is for cooling the lobby and the gym.

The landlord received complaints through the “ClikFIX” program and went to try to figure out the source of the noise. A decimeter was used to record sounds that are above normal; no sounds were beyond the normal range and the HVAC company advised it is normal and that wrapping wouldn’t make much difference.

The HVAC system was addressed by adjusting the timer so that it would be on less frequently than previously. Currently the system turns on at 8:00 a.m. and turns off at 5:00 p.m.

The landlord’s witness (MY) is the maintenance manager in the rental building and testified that the HVAC system functions as it is intended to. It is not likely possible to move the HVAC system. It is internally ducted to the lobby and to the gym in 2 parts. To move it would require removing the ceiling and tearing up the lobby and the gym, which would be a lot of work.

Analysis

The *Residential Tenancy Act* states:

28 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 and lawful purposes, free from significant interference.

32 (1) A landlord must 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.

I also refer to Residential Tenancy Policy Guideline #6 – Entitlement to Quiet Enjoyment, which states, in part:

“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 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.

“In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises.”

In this case, the tenant seeks an order that the landlord make repairs to the HVAC system, however I accept the testimony of the landlord’s witness that it is possible to move the HVAC system to another area of the building, but that would require a lot of work, and I am not satisfied that the tenant has established that the landlord should go to that extent or cost. The landlord took steps after becoming aware of the problem by re-setting the timer and calling in an HVAC professional. I see no other repair that the tenant has proven is required, and I dismiss the tenant’s application for an order that the landlord make repairs to the rental unit or property.

The tenant has also applied for an order reducing rent for repairs, services or facilities agreed upon but not provided. The landlord offered 2 options to assist the tenant: to move to another unit, but for higher rent; or end the tenancy without penalty. The tenant testified that had she known of the noise, she never would have rented the unit.

I have reviewed all of the evidence, including the audio recording which sounds like a fan running, and is not a truck across the street. I cannot, in the circumstances find that reducing rent or providing the tenant with compensation will satisfy the complaint of noise. Nor can I be satisfied that any reduction in rent is warranted. The tenant testified that rather than reducing rent by 50% the tenant claims compensation, which can only be granted in the event that I find that the landlord has failed to comply with the Act or the tenancy agreement. There is no evidence of that, considering that the landlord took the steps outlined above in an attempt to find a solution. The decimeter found that noise was within the reasonable range, and I dismiss the tenant’s application for a reduction in rent or compensation.

Conclusion

For the reasons set out above, the tenant's application is hereby 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: August 27, 2021

Residential Tenancy Branch