



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pinnacle International
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RP, RR, MNRT, OLC, FFT

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; an order reducing rent for repairs, services or facilities agreed upon but not provided; a monetary order for the cost of emergency repairs; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and 2 agents of the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

At the commencement of the hearing, the landlord's agent advised that the tenant's evidence has been received. However, the tenant advised that none of the landlord's evidence has been received by the tenant. The landlord's evidence was received by the Residential Tenancy Branch on January 24, 2022 and was uploaded to the automated system on February 2, 2022. The landlord has not provided anything to substantiate service of such evidence to the tenant. Any evidence that a party wishes to rely on at a hearing must be provided to the other party. Since the landlord has not established that, I decline to consider any of the landlord's evidence. All of the evidence of the tenant has been reviewed and is considered in this Decision.

During the course of the hearing the tenant testified that repairs have been completed and the tenant withdraws that portion of the application.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided, and specifically quiet enjoyment?
- Has the tenant established a monetary claim as against the landlord for the cost of emergency repairs?
- Has the tenant established that the landlord should be ordered to comply with the *Act* or the tenancy agreement, specifically with respect to entering the rental unit?

Background and Evidence

The tenant testified that this fixed term tenancy began on October 1, 2020 and reverted to a month-to-month tenancy after the first year, and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$1,050.00 is payable on the 1st day of each month 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 \$525.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a studio apartment in a 3-story complex.

During the first year of the tenancy the tenant complained about loud noises and was told to shut up and be quiet and the landlord's agents refused to listen to the noises the tenant had complained about. The tenant was told that it was acceptable and nothing would be done about it. The tenant ceased all communications for a full year and suffered in silence. The noises stopped for a couple of months, and the tenant believes that when the main building heat in summer is turned off, the noises from the pipes stopped hammering. However, in the fall when the main heat was back on, the noises of the pipes started again. The tenant went over their heads and contacted their boss, who checked out the noise. Within 2 days or so after the tenant filed this application, it got fixed.

The tenant was extremely sleep deprived, and denied any reasonable enjoyment of the apartment, and couldn't sleep for an entire year. It affected the tenant's physical and emotional health and the tenant almost lost his job as a result.

With respect to the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement, the tenant testified that the landlord's agent (KH) puts notes under the tenant's door saying that it's 24 hours notice to enter.

On December 27, 2021 the tenant sent an email to the landlord stating that the heat stopped in the late evening the night before, forcing the tenant to leave the rental unit until it is fixed. The tenant has also provided a copy of note dated December 27, 2021 at 9:00 a.m. from the landlord's agent stating that since the tenant forgot to give permission to enter the rental unit, the note serves as 24 hours notice to enter, and that someone will attend the following day after 9:00 a.m. to check the heat. The following day, the tenant sent another email to the landlord stating that the landlord's agent (KH) was not given permission to enter the rental unit and it was the third illegal entry by that person. It also states that the tenant will no longer tolerate it.

Another notice to enter was slid under the door of the rental unit, and a copy has been provided for this hearing. It is dated January 5, 2022 and states that the manager and a technician will enter the rental unit on January 7, 2022 between 1:00 and 5:00 p.m.

Most recently, the landlord's agent entered the rental unit, caused a search warrant to be executed in the tenant's rental unit, because the landlord's agent saw a gun purchased from Canadian Tire, and police told the landlord's agent that there were no guns in the rental unit. It was an insane gesture on the landlord's part, who should never have been in the rental unit. The tenant was served with an eviction notice based on the landlord's belief that the tenant has guns, which is absolutely preposterous. The tenant disputed the eviction notice and a hearing is scheduled for April 22, 2022. The tenant's property was taken away and returned.

Letters of other tenants have also been provided for this hearing stating that the landlord's agent enters other rental units, and there have been other questionable entries as well. The tenant testified that on one occasion, the landlord's agent wouldn't leave the tenant's rental unit while the tenant was showering.

The tenant wants to be left alone with no more bullying and harassment.

The landlord's agent (KH) testified that entry has never happened unless it was an emergency or at the tenant's request. The emergency was no heat.

If the tenant decided to suffer quietly, the landlord had no idea during that time that there were any problems. The tenant had complained about noises around the kitchen and the wall under the bed, but there is a heater on that wall. The landlord's agent

asked a colleague to go with her to try to fix the problem and when they arrived, they heard loud knocking noises coming from the floor between the boiler room and the tenant's apartment. On or about October 12, 2021 a contractor was called, who arrived on October 14, 2021 and removed the carpet from the hallway outside the tenant's apartment, and removed the floor. A pipe coming from the boiler room was touching wood under the hallway. The landlord's agents thought something could be placed there to prevent knocking, and when the contractor put the pipe back, there was no knocking. The repair was completed in 4 days after the landlord received notice of this hearing.

The tenant was quiet for 10 months, so the landlord did not know there was a problem. It was a different noise at the beginning, being normal noises from the heater, but the noise that is the subject of this hearing was different.

The landlord's witness (JV) testified that during this time the tenant started showing abusive behaviour.

The tenant has not provided proof of missing work or any evidence to support the \$5,000.00 claim, which is unreasonable. The landlord's agent and witness went to listen and couldn't hear what the tenant was actually experiencing for a year. Over the last year, suffering in silence, the landlord could not know until the tenant told them.

The tenant did talk to the landlord's agent (KH) and sent several messages that are abusive. The landlord's agent was afraid and called the witness, who advised the tenant to start emailing the witness instead of the landlord's agent. The tenant was not shut down. That was in October, 2020 and complaints were always addressed.

SUBMISSIONS OF THE TENANT:

This has been extremely stressful. The landlord's agent (KH) has refused to listen at all to the tenant and all complaints were shut down. The tenant disputes that the landlord's agent is afraid of the tenant. The tenant has suffered beyond imagination, and a noise log is part of the tenant's evidence.

SUBMISSIONS OF THE LANDLORD'S AGENT:

No one is forcing the tenant to stay; the tenant shouldn't pay rent and suffer.

Analysis

A landlord may not enter a rental unit for any reason unless invited in by the tenant at the time of entry, or no sooner than 24 hours after giving written notice to enter, which

must state the date, time and reason for entry, which must be reasonable. Any notice posted to a door of a rental unit is not served until 3 days after posting, which would then require 4 days notice to enter. In this case, the landlord's agent posted a note stating that since the tenant forgot to give permission to enter the rental unit, the note serves as 24 hours notice to enter, and that someone will attend the following day after 9:00 a.m. to check the heat. That is not 24 hours notice to enter, and given that the tenant was not at home, the tenant obviously did not invite the landlord's agent in at the time of entry. The landlord's position is that it was an emergency repair, being lack of heat. If that was the case, the landlord's note would not have said, "Since you forgot to give permission..." I find that the tenant did not forget. Further, the *Act* permits entry for emergencies, but only if the entry is necessary to protect life or property.

I have also reviewed the letters provided as evidence by the tenant, and I order the landlord to comply with the *Act* as follows:

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

With respect to the tenant's application for monetary compensation for emergency repairs, the *Act* also specifies that emergency repairs are:

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system,
 - (iv) damaged or defective locks that give access to a rental unit,
 - (v) the electrical systems, or
 - (vi) in prescribed circumstances, a rental unit or residential property.

Ear plugs are not an emergency repair, and the tenant's application for reimbursement of ear plugs is dismissed.

With respect to the tenant's application for a reduction in rent, in order to be successful, the onus is on the tenant to establish that the tenant suffered damages due to the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement, and what efforts the tenant made to mitigate any damage or loss suffered.

In this case, the tenant testified that he was sleep deprived for a whole year but also testified that the noise stopped for a couple of months, guessing only that in summer when the main heat for the building is turned off, the pipes stopped hammering. However, I also accept the undisputed testimony of the tenant that the tenant did request repairs during the first year.

I have also reviewed the noise log provided by the tenant, and it shows that the noise stopped at the end of May and started again at the end of August. The tenant has also provided a copy of a message to the landlord's agent from early in the tenancy notifying the landlord of the noise, however the letter is not dated. The reply from the landlord's agent is dated October 6, 2020 stating that a number of things were checked, such as the thermostat, the zone valve, and it's an old building and it has to be loved the way it is. On October 19, 2020 the landlord's agent wrote that no tenant in the rental unit for 20 years was ever deprived of sleep, and that the landlord's agent could not go there to listen for an hour, and no maintenance personnel is on site all of the time. It also states that some people are more sensitive to noise, but there is not much the landlord can do for that. It also suggests contacting the landlord one day when there are noises. On October 21, 2020 the tenant replied to the letter of the landlord's agent with details of the noise. Numerous other letters have also been provided for this hearing.

On October 20, 2021 the tenant wrote to another agent of the landlord thanking that person for remedying the problem.

The tenant seeks compensation in the amount of \$5,000.00 as a reduction in rent. I agree, considering the noise logs and notes made by the tenant as well as the landlord's responses, that the tenant did what he could to mitigate the loss of quiet enjoyment. I also find that the landlord did not investigate the complaints in a manner that would provide any remedy to the tenant, considering that it took another agent of the landlord a mere days to correct the disruptions.

The landlord's position is that because the tenant remained silent for so long, the landlord had no knowledge of it continuing. The only way I could accept that was if the landlord's agent was satisfied that the tenant "learned to love" the building. Further, the relationship of the parties had been hampered, largely to do with entering the rental unit without sufficient notice. Other evidence suggests that the remedy of the landlord's agent was for the tenant to move out, which is not acceptable; the parties have a contract.

I find that the tenant has established a rent reduction due to the landlord's failure to comply with the *Act* regarding repairs required and loss of quiet enjoyment. An average person sleeps for 8 hours per night, which is 30%. A reduction in rent is allowed in the amount of 30% of the rent for 9 months ($\$1,050.00 \times .03 = \$315.00 \times 9 = \$2,835.00$).

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee.

I grant a monetary order in favour of the tenant in the amount of \$2,935.00 and I order that the tenant be permitted to reduce rent for future months until that sum is realized, or may otherwise recover it by filing the order for enforcement in the Provincial Court of British Columbia, Small Claims division as a judgment.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed, as withdrawn by the tenant.

The tenant's application for a monetary order for the cost of emergency repairs is hereby dismissed.

I hereby order the landlord and the landlord's agents to comply with Section 29 of the *Residential Tenancy Act*, set out above with respect to entering the rental unit.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,935.00, and I order that the tenant be permitted to reduce rent for future months until that amount is realized, or may otherwise recover it.

This order is final and binding and may be enforced.

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: February 14, 2022

Residential Tenancy Branch