



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding ONNI GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDCT, RR, RP, FFT

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for compensation for a monetary loss or other money owed, a reduction in monthly rent, an order requiring the landlord to make repairs to the rental unit, and to recover the cost of the filing fee.

The tenants and the landlord's agents (landlord) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this application, the tenants listed multiple claims. I find the most urgent matter to consider is the tenant's request for an order requiring the landlord to make repairs. Additionally, I do not find the other issues listed in the tenants' application sufficiently related. I will, therefore, only consider the tenant's request for an order for repairs. The balance of the tenants' application is dismissed, with leave to re-apply. Leave to reapply is not an extension of any applicable time limit.

Additionally, the Rules require that all evidence available to an applicant at the time they file their application must be submitted at that time and served to the respondent in one single package. If not available, the evidence must be filed and served to the other party when it does become available. In all cases, the applicant's evidence must be filed and serve to the RTB and the other party at least 14 clear days prior to the hearing. Instructions for evidence submissions are provided with the application package given to applicants.

In this case, the tenants submitted a significant amount of digital and documentary evidence two days before the hearing. I have excluded this evidence as I find it procedurally unfair to the other party if the evidence was accepted. The tenants were allowed to read from their evidence.

Issue(s) to be Decided

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit and recovery of the cost of the filing fee?

Background and Evidence

The tenancy started on October 1, 2022, and monthly rent is \$3,325. The tenants paid a security deposit and pet damage deposit of \$1662.50 each. The rental unit is in a 4 floor, 75 unit building.

To support their application, the tenant, CV testified to the following: Since they moved in, they have constantly had a pounding headache due to the vibrations coming from somewhere in the building every hour throughout the night. The vibration has caused a

loss of sleep and she has not been able to sleep in her bedroom. There are strong cooking odours coming into the rental unit, which impacts their quiet enjoyment.

The tenant provided testimony which is more fully set out in a written statement, reproduced in part, as follows:

I'm writing to you about the noise/vibration issue in our unit. I've addressed this to [] on several occasions, including the day after our first night in the unit. He had mentioned that he would speak to you about the details so you would be aware.

I have not been able to sleep well since we moved in. There is an awful intermittent sound and vibration in the wall we share with Unit 202. After about a month of trying to figure it out I was in touch with our neighbour, [] and we were able to determine through texting back and forth when I would hear it and when it would stop, that it was in time for the most part with her HVAC unit.

Our neighbour said she can tell her heat is on from the elevator (2 units over) when she comes down the hallway. We can hear her unit from our kitchen and I share a wall where my headboard is an inch away from the wall carrying this sound. I've documented several videos and sound clips where you can hear it.

[] had someone come in and "fix" the loud sound that was coming from [] HVAC unit in the apartment, but now the sound that I hear in the wall is much louder and with the colder temperatures it has become more frequent. We do not experience the same issue when our HVAC unit turns on.

I've enlisted the help of a building inspector who has advised it is likely one of the following:

1. The wall is not insulated properly.
2. The unit is not installed properly and may need a rubber buffer or to rebalance the unit.

[Reproduced as written except for anonymizing personal information to protect privacy]

The tenant also read from a report from a mechanical company she hired, but whose report was submitted two days before the hearing and was excluded.

In response, the landlord, DM, testified to the following: The landlord was not aware of the tenant's issue until October 18, 2022, not from the first day of the tenancy. The landlord has reasonably exhausted all sources to address the problems presented by the tenant and they have not had any issues with any other tenant in the building or the tenant residing in the rental unit prior to these tenants. They have immediately

responded to the tenant when informed of her complaints. The landlord hired a mechanical company to test the heat pump and investigate the complaints. The decibel levels were investigated and tested and found to be in a normal range, and any issue with the heat pump was resolved. There are multiple layers of barriers between the rental unit and the mechanical room. The landlord has incurred costs in investigating the noise complaints.

Landlord JW testified to the following: That they live next door to this rental unit and have received text messages at all hours of the day and night from the tenant. When receiving a complaint, they have immediately gone to the rental unit, but were unable to hear the noise or feel the vibration, even when pressing their face against the tenant's wall.

Filed in evidence was a written statement from JW, reproduced in part as follows:

I would like to weigh in on the dispute letter from [] in unit [].
As you know, I have been to her unit many times, day, and night, for inspections, etc. Also, I live next door to [], and I have no issues in my unit.
[] and the various trades we have had in have did not notice a noise or vibration in her unit.
The vibration is not the only issue [] has. When the vibration isn't bothering her, she suggests the plumbing is a huge issue. Or strange odors are an issue. Or her roommate [] is an issue. Or []'s husband visiting is an issue. Or the girls the live below her are playing Uno too loud at 8pm.

She has had many opportunities to move, but by her own admission, cannot find a building as nice as []. I even found her a brand-new building that she applied for and was approved, she was meant to move at the end of this month and changed her mind last minute. In fact, each month she says she is moving, and [] gets her family ready to move in and then as we approach the end of the month [] changes her mind.
Here are some notes on claims in her letter and notice:
"to repair would be 'a very big job' to which [] mentioned afterward the [] likely would not undertake." I was still new at this point and didn't know what would be done in this instance.

[Reproduced as written except for anonymizing
personal information to protect privacy]

Filed in evidence was the written report of the mechanical company, for the inspection of November 18, 2022 and text messages between the tenant and DM.

In rebuttal, tenant AL testified to the following: They do not hear the noise or vibrations to which CV refers as they are in a separate bedroom, but they do know that CV hears the noise and feels the vibrations.

Analysis

Based upon the relevant evidence and a balance of probabilities, I make the following findings:

Section 32 of the Act requires that a landlord must provide and maintain a rental unit in a state of repair that complies with the health, safety, and housing standards required by law and having regard for the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Where a tenant requests such repairs, I find the landlord must be afforded a reasonable amount of time to take sufficient action.

In this case, I find the evidence shows that the landlord's agents dealt with the tenant's requests concerning the excessive noise and vibrations. The response included hiring a mechanical company to investigate the complaints as well as having the on-site building manager, JW, who lives next door, immediately come to the rental unit when receiving a complaint. JW was unable to hear the noise or the vibrations.

I also find tenant AL's testimony compelling, in that AL, who lives in the same rental unit, has not heard the noise or felt the vibrations.

As to the cooking odours, I find it reasonable to conclude that residents in a multi-level, multi-unit building will be aware of cooking smells from other units, as I find it reasonable to conclude that there are shared vents throughout the building. I do not find there is anything the landlord can do to prevent the tenant from being impacted by other tenants' cooking.

I find some of the complaints are based on everyday living in a 75 unit building.

For the reasons set out above, I find the evidence shows that the landlord complied with their obligation under the Act to address the tenant's requests in a timely manner and I find this response to be comprehensive and thorough. As a result, I find that the landlord has maintained the residential property in a state of decoration and repair having regard to the character of the residential property and rental unit.

For these reasons, I find the tenant submitted insufficient evidence to support their requests for an order for repairs to the rental unit and this request is **dismissed**, without leave to reapply. I also dismiss the tenants' request for recovery of the filing fee, without leave to reapply.

Conclusion

For the reasons set out above, the tenants' request for an order requiring the landlord to make repairs to the rental unit is dismissed, without leave to reapply, due to insufficient evidence.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 15, 2023

Residential Tenancy Branch