

Residential Tenancies Tribunal

Application 2022-No.64-NL

Decision 22-0064-00

Jacqueline Williams
Adjudicator

Introduction

1. Hearing was called at 2:16 p.m. on 12-April-2022.
2. The applicant, [REDACTED], hereinafter referred to as “the tenant” attended by teleconference.
3. The respondent, [REDACTED], hereinafter referred to as “the landlord” did not attend.

Preliminary Matters

4. The landlord was not present or represented at the hearing and I was unable to reach her by telephone at the start of the hearing. This Tribunal’s policies concerning notice requirements and hearing attendance have been adopted from the *Rules of the Supreme Court, 1986*. According to Rule 29.05(2)(a) respondents to an application must be served with claim and notice of the hearing 10 clear days prior to the hearing date and, where the respondent fails to attend the hearing, Rule 29.11(1) states that the hearing may proceed in the respondent’s absence so long as she has been properly served. The tenant submitted an affidavit (TT#01) with her application stating that she had served the landlord with notice of the hearing, by emailing her on 30-January-2022, in addition to this service our Board also provided service to the landlord on 09-March-2022 of the current hearing date by email. As the landlord was properly served, and as any further delay in these proceedings would unfairly disadvantage the tenant, I proceeded with the hearing in her absence.

Issues before the Tribunal

5. The tenant is seeking:
 - Rent reimbursed for inconvenience \$1,500.00
 - Future rent reduced until repairs completed \$350.00 per month
 - Utilities paid for inconvenience \$500.00
 - Hearing expenses reimbursed \$20.00

Legislation and Policy

6. The jurisdiction of the Director of Residential Tenancies is outlined in sections 46 and 47 of the *Residential Tenancies Act, 2018*.
7. Also relevant and considered in this decision is the following section of the *Residential Tenancies Act, 2018*: Section 10: Statutory conditions, as well as, Residential policies 4 and 8.

Issue 1: Repairs made

Issue 2: Rent reimbursed for inconvenience \$1,500.00

Issue 3: Future rent reduced until repairs completed \$350.00 per month

Issue 4: Utilities paid for inconvenience \$500.00

Relevant Submissions

8. The tenant said that she moved into the apartment around May 2020, she had a verbal rental agreement with the previous owner and paid \$800.00 a month. She said that approximately 6 months later the house sold to the present owners.
9. At the time the house sold, approximately September 2020, the tenant continued her verbal rental agreement with the new landlord. She said that the landlord reduced her rent to \$750.00 and she, the tenant, agreed to be responsible for the lawn care and snow clearing. She said her rental period is the 1st to the last day of the month; rent is due on the first day of the month.
10. The tenant said that she required funding this past fall, in October 2021, at that time she and the landlord, entered a written monthly agreement with the same terms outlined in paragraph 9.
11. The tenant said she has been hearing a high pitched beep in the apartment that sounds every 30 seconds. She said that her dog has been impacted by the noise and has scratched his ear really badly, she said that she feels like the noise is torturing her. The tenant is seeking reimbursement for inconvenience, until repairs to the apartment have been made.
12. The tenant said she first started hearing the noise in December 2021. She said she fully searched her apartment and couldn't find the source of the noise. At that time, she contacted the landlord. She said that the landlord didn't respond for a number of weeks. When the landlord responded, the tenant said the landlord apologized for the late response and the trouble that the tenant has been having.
13. The tenant said that the upstairs apartment has been rented by another tenant, he has his furniture and electronics in the apartment, however, he has never lived there. She believed that potentially the beep could be coming from his apartment and that it sounded like it was a dying battery in a fire alarm.

14. The tenant said that both the fire department and the police have said that the sound is coming from upstairs.
15. The tenant submitted a Request for repairs form (TT#02) that she gave to her landlord. The form is signed and dated for 22-January-2022. It is requesting that the landlord stop the alarm from chirping every 30 seconds.
16. The tenant said that the landlord had a locksmith come by to open the door and check the issue. When he arrived he told the tenant he was there to check on the alarm and she asked him to give her an update. She said she left for a few minutes and when she returned he was gone. She did not receive an update about what was happening. She said she was hopeful that the problem was rectified but very quickly heard the beep again.
17. The tenant said she begged the landlord to fix the problem and the landlord was dismissive of her concerns and recommended that she focus on the sound of the water/ocean outside.
18. The landlord came into the apartment before the middle of February 2022 to listen for the sound and she was accompanied by her son. The tenant videotaped the encounter and provided the tape to this board (TT#03). The tenant also provided another video to indicate the beeping sound (TT#04). The landlord says in the tape that there is no noise and the tenant said you can clearly hear the beep every 30 seconds.
19. The tenant said that an electrician came to her apartment because she was having issues with the outlets and her tv. had caught fire. When he came in, she said, he said that the electric was fine and that he agreed that the beeping must be coming from upstairs.
20. The tenant said that she feels as though she is being tortured and the landlord is not helping her. She loves where she lives but enduring this constant "water torture" like beeping is really impacting her health. She said that both she and the dog are twitching in their sleep and she is experiencing twitching more frequently, she believes it is directly related to the beep.
21. The tenant describes the sound as audible, it is not soft or whisper like.
22. The tenant is requesting that the landlord fix this issue. She is also requesting the following for the unbearable living condition that she has endured since December: Rent \$1500.00, rent reduced until repair is made \$350.00, and utilities paid for inconvenience \$500.00.

Analysis

23. I have listened to the videos provided into evidence (TT#03 & TT#04) a number of times. On video TT#03 the landlord said that she can't hear anything, I am also unable to hear any beeping sounds. In an effort to do due diligence I have located an article that states:

“High-frequency hearing loss is a condition where people have difficulty hearing sounds between the 2,000 to 8,000 Hertz range...While more commonly found as we get older, high-frequency hearing loss can occur at any age....People with high-frequency hearing loss are also likely to have difficulty hearing high-pitched beeping and bird songs.” (*New York Hearing Doctors Institute for Hearing Balance, Why are high frequency sounds typically the first to go in hearing loss? New York, 2022, www.newyorkhearingdoctors.com/title-of-blog-post.)*

24. The article shows that individuals may experience high frequency hearing loss as they age, based on this information, I acknowledge that the tenant may be able to hear a beeping noise that is inaudible to both myself and the landlord.
25. Statutory condition 1, set out in section 10.(1) of the *Residential Tenancies Act, 2018* states:

Statutory conditions

10. (1) Notwithstanding an agreement, declaration, waiver or statement to the contrary, where the relationship of landlord and tenant exists, there shall be considered to be an agreement between the landlord and tenant that the following statutory conditions governing the residential premises apply:

1. Obligation of the Landlord -

(a) The Landlord shall maintain the residential premises in a good state of repair and fit for habitation during the tenancy and shall comply with a law respecting health, safety or housing.

(b) Paragraph (a) applies regardless of whether, when the landlord and tenant entered into the rental agreement, the tenant had knowledge of a state of non-repair, unfitness for habitation or contravention of a law respecting health, safety or housing in the residential premises.

26. The tenant has taken the appropriate steps to resolve this issue by reaching out to the landlord on numerous occasions, requesting that repairs be made stop the beeping sound that she can hear in the apartment. The tenant has also provided the landlord with an official request for repairs (TT#02) in her effort to have this issue resolved. I find that the landlord has also responded appropriately to the tenant's requests, but has stated on the video that she is unable to hear the sound being described by the tenant, as I also can't hear this sound, I accept that neither can the landlord. She is therefore not in contravention of Section 10 of the Act and is not intentionally avoiding repairs to the apartment.
27. From the description of the sound heard by the tenant, the sound appears to be coming from a distance. The tenant believes that the sound is coming from the upstairs apartment, which she says is rented but not being used. Under section 42 of the Residential Tenancies Act, 2018, an application from a landlord or tenant can only deal with issues regarding the rental agreement between the parties. Therefore, a tenant cannot make an application seeking repairs be undertaken in the rental unit of another tenant under a different rental agreement. Likewise, this tribunal cannot order the landlord to take action against another tenant in a different unit under a different rental

agreement from the applicant's. If the tenant's peaceful enjoyment is being interfered with by sounds emanating from another apartment, she has a right to terminate her rental agreement with the landlord, by following the termination provisions set out in the *Act*.

Decision

28. The tenant's claims for compensation for inconvenience and repairs made fails.

Issue 2: Hearing expenses reimbursed \$20.00


29. The tenant submitted the receipt for \$20.00 for the cost of the hearing (LL#06) and pursuant to policy 12.01, as her claim was unsuccessful, she is not entitled to reimbursement of that cost from the landlord.

Summary of Decision

30. The tenant's claims for compensation for inconvenience and repairs made to her apartment fails.

April 20, 2022

Date


Jacqueline Williams, Adjudicator
Residential Tenancies Office