



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

This hearing dealt with the tenants' Applications for Dispute Resolution seeking a monetary order and a rent reduction for repairs, services or facilities agreed upon but not provided and an order to have the landlord comply with *Residential Tenancy Act* (Act), regulation or tenancy agreement.

The hearing was convened in person at 1019 Wharf St, Victoria, BC and was attended by the tenant and the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to a monetary order for compensation for the loss of quiet enjoyment in contravention of the Act, regulation or tenancy agreement; to an order to reduce rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 27, 28, 67, and 72 of the Act.

Background and Evidence

The residential property is a 43 year old reinforced concrete apartment building with 84 units over 15 floors on top of a four-level split parkade. The landlord describes the location of the property to be a quiet, out of the way destination point.

In October 2007 the landlord engaged a consulting engineer to determine how they could "restore occupant comfort and enhance the long term performance of the building envelope." Based on the engineer's report received in May of 2008 the landlord initiated a window replacement project in 2010.

The landlord acknowledges that the mobilization of the project began on June 7, 2010 and all was substantially completed by September 28, 2010 with final clean up completed by the end of October 2010. The tenancy ended on August 31, 2010, prior to the end of the project.

The tenant provided a statement, dated September 8, 2010 that since June 21, 2010 he has experienced interference with the "right to quiet enjoyment" of his rental unit. He states, despite being incomplete when he ended his tenancy the project had spanned

that last 2 full months of his tenancy over the summer and is seeking compensation in an amount calculated as 50% of the monthly rent for this period.

The tenant also included a copy of a letter sent to the landlord dated September 16, 2010. The letter outlines the tenant's specific complaints and request compensation for loss of quiet enjoyment.

The tenant has also provided the following documents as evidence:

- A copy of a letter of complaint from the tenant to the building manager dated August 12, 2010 indicating that his rental unit had been left unguarded and unlocked for period of at least 3 hours on that date and requested the contractor cease any entry into the rental unit until after the end of the tenancy;
- 6 photographs of work in progress on the residential property; and
- During the hearing the tenant provided copies of his opening statements to both the landlord's agent and to me.

The tenant asserts that of primary concern to him was the loss of security and privacy. He testified that he was planning to get married on August 14, 2010 and that on August 12, 2010 he was counting money received as wedding gifts in his rental unit when a worker for the contractor walked in on him.

As a result, he felt that he should immediately deposit the cash into his account and so left for several hours in the afternoon. He states that he left his home at 1:00 p.m. and when he returned at 4:00 p.m. the door to his rental unit was unlocked. The tenant was not only concerned about all of his possessions but in particular he also had his wedding rings in the unit and he was concerned of the unit being open for that period of time.

He also noted that a worker returned to the rental unit at around 5:00 p.m. to lock up "for the day". The tenant asserts that since all access points to the residential property, including the front door and the normally secured parking, were left open all day long during the project and that anyone could enter the building and since the workers did not have any name tags or other way to identify them a tenant had no way of knowing who was in the building for legitimate purposes.

The tenant also contends that when he reported this incident to the onsite building manager, the manager showed no caring and a lack of concern. The tenant also noted that due to the work being completed there was a grinding noise that went on for "hour-after-hour, day-after-day, week-after-week and month-after-month".

The tenant testified that he worked shift work with days off that fluctuate and so he was often required to try to get some sleep during the day when the window replacement was being conducted. He also noted that he often was not able to comfortably use his

unit to on his days off as they had occurred on weekdays that the contractor was working.

The landlords submitted the following additional documents into evidence:

- Copies of correspondence from the landlord to all tenants and individual tenants including the landlord's announcement of the project and project updates;
- Several excerpts from their Building Envelope Condition Assessment Report;
- Copies of some complaints from tenants over a period of years regarding the condition of the windows;
- Copies of Site Review Reports completed by the landlord's consulting engineers for the duration of the project;
- Copies of correspondence between the tenant and the landlord throughout the tenancy on a range of issues;
- A copy of the tenant's notice to terminate the tenancy dated July 8, 2010;
- A copy of the Condition Inspection Report completed at both move in and move out and a copy of the landlord's record of disposition of the security deposit;
- A copy of a letters from two tenants regarding the project including one thanking the landlord for the cheque "in consideration of the disturbance surrounding the window project";
- A copy of the Occupancy/Completion Permit issued by the local authourities dated November 15, 2010;
- Copies of Material Safety Data Sheets for products used during the installation; and
- During the hearing the landlord's agent provided copies of his closing statements to both the tenant and to me.

The landlord's agent testified that there were no reports of any thefts or damages to vehicles or any rental units; that the normal practice was to lock units when the workers were done with them and to do a check at the end of the day. The landlord also confirmed with the tenant that as a result of his complaint regarding the issue in his unit that the landlord agreed to cease all work in that unit until the tenant vacated it.

The landlord noted that in order to maintain an efficient schedule the main access doors remained open to allow the contractor to move supplies around freely and the contractor had the responsibility to monitor suspicious activity on the property.

The landlord also noted that contractor was allowed to enter rental units no earlier than 8:00 a.m. and no later than 6:00 p.m. The landlord provided no testimony regarding the noise disturbances or the impact on the tenant that resulted.

While the landlord acknowledges access points were left open during the work day the landlord had onsite staff in the lobby area and had conveyed an expectation on the installation contractor to monitor the area for suspicious activity. The landlord noted that

there were no reports of unauthorized access or theft of working materials or tenant belongings.

The landlord asserts that the application of Section 28 of the *Act* requires a component of reasonableness and that the right to quiet enjoyment is not absolute. The landlord contends that there must be a balance between the landlord's obligations to maintain and repair rental units and residential properties and the provision of quiet enjoyment.

Analysis

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

Neither party disputes that the windows throughout the residential property required replacement, in fact the tenant had previously complained to the landlord of problems with the windows and contends that project should have included replacement of sliding glass doors. As such, I make no findings on the matter of the necessity of the work.

However, I note that as a result of the landlord making the determination to go forward with the project the installed windows had to comply with health, safety and housing standards required by law. I accept, based on the landlord's submission of the Occupancy/Completion permit issued by the local authorities that the replaced windows comply with health, safety and housing standards required by law.

Section 27 stipulates that a landlord must not terminate or restrict a service or facility if that service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

If the landlord terminates or restricts a service or facility, other than one that is essential or a material term of a tenancy the landlord must provide 30 days notice and reduce the rent in an amount that is equivalent to the reduction in the value of the tenancy.

Although the tenant had applied for a rent reduction based on Section 27, I find he has provided no evidence indicating that the landlord had breached this section of the *Act*. In addition, as the tenant no longer resides in the rental unit a rent reduction is not an applicable remedy available to the tenant. I therefore dismiss this portion of the tenant's application.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental unit suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

Residential Tenancy Policy Guideline 6 stipulates that “it is necessary to balance the tenant’s right to quiet enjoyment with the landlord’s right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.”

While the landlord indicated that he had a building manager on site and part of the role of the project manager was to monitor the site for suspicious activity, I accept the tenant’s assertion that there was not always a building manager available and that anyone could enter the residential property and go unnoticed at any time.

From the evidence, I accept that project crew required access to the building and to individual units each day and all day long. I also note that the landlord chose to provide this access by leaving secured access points unsecured and wide open. I note the landlord did not dispute the tenant’s statement that contractor staff did not have any identification. I am not satisfied that this was the landlord took all reasonable steps to ensure continued security for the tenant during the project.

Contrary the landlord’s assertion that quiet enjoyment is not intended to mean silence I find that when the residential property is valued somewhat based on its quiet location in an urban centre and the legislation indicates that a tenant is entitled to quiet enjoyment including “freedom from unreasonable disturbance” the right, in this case, is intended to include freedom from unreasonable noise.

I find it undeniable that the tenant suffered a loss of quiet enjoyment, specifically the loss of the right to reasonable privacy and security and freedom from reasonable disturbance and therefore a subsequent loss in the value of the tenancy for that period. However I accept that once the tenant identified the specific problem privacy and his own unit’s security the landlord took action that prevented any recurrence of the problem identified by the tenant.

As a result, I find the tenant is entitled to compensation for that loss.

Policy Guideline 6 states: “in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed”.

As such, I make note that the project work was completed Monday to Friday normally from between 7:00 a.m. and 4:00 p.m. leaving the residential property undisturbed for all evenings, nights and weekends. I recognize that as a result of the tenant's work schedule the project schedule caused significant disturbance from his ability to rest and sleep.

Conclusion

I find that the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$250.00** comprised of \$100.00 for specific disturbances to the tenant's use of the rental unit (including contractor access); and \$100.00 for generalized disturbances (such as noise disturbances and lack of security to the building and parking area) and the \$50.00 fee paid by the tenant for this application.

This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

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: January 25, 2011.

Residential Tenancy Branch