



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC and FF

Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Tenant is entitled to compensation for the loss of the quiet enjoyment of their rental unit and/or to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on December 11, 2009; that the Tenant paid monthly rent in the amount of \$1,800.00; and that the tenancy ended on September 30, 2011.

The Landlord and the Tenant agree that the rental unit above the Tenant's rental unit was renovated during the latter portion of this tenancy; that there were renovations to the roof and the exterior of the building during the latter portion of the tenancy; that the renovations began in the middle portion of July; that renovations to the upper rental unit stopped for a period of approximately three weeks as the Landlord had been ordered to cease work due to the fact they had not yet obtained a building permit; that renovations to the roof and exterior of the building were not impact by the "stop work Order"; and that renovations were not completed by the time this tenancy ended.

The Witness for the Landlord, who was the manager of the renovation project, and the Tenant agree that there was general construction noise on most week days, between 8 a.m. and 5 p.m., during the period of renovation and that the construction noise including concrete drilling on many occasions. The Witness for the Landlord stated that

there was occasionally construction noise on Saturdays and holidays, prior to 8 a.m. and after 5 p.m. as there were urgent repairs required to the roof, but they were relatively infrequent. The Tenant contends that the repairs started prior to 8 a.m. or continued past 5 p.m. approximately two times per week and that construction sometimes occurred during the weekend and holidays, specifically the long weekend in September.

The Tenant and the Witness for the Landlord agree that the Tenants were not notified that renovations were to commence; that they were not provided with any timelines for the renovations; and that they eventually received some informal notifications from the Witness regarding anticipated work schedules.

The Tenant contends that the construction noise was particularly disruptive for them as the female Tenant was home during the day caring for their child who was six months old at the time. The Landlord and the Tenant agree that the rental unit was vacant for 1.5 weeks in August. The female Tenant stated that she was away from the rental unit for longer than 1.5 weeks as she found the construction particularly disruptive.

The Tenant contends that their security was compromised on one occasion because workers who had been working in their rental unit while they were away left the home unlocked and unattended for at least 30 minutes, although they acknowledge they did not suffer a loss as a result of this incident. The Witness contends the Tenant's property was not at risk during this period as workers were within close vicinity of the unit.

The male Tenant expressed concern that their safety may have been compromised because the Landlord did not obtain a building permit for the renovations. The Witness for the Landlord stated that safety was not compromised because no load bearing walls were removed. He stated that the Landlord did not initially obtain a building permit because they needed to demolish the interior of the unit before drafting building plans, and that they could not obtain a building permit until plans had been drafted.

The Landlord and the Tenant agree that the Landlord paid \$875.00 to the Tenant as compensation for the disruptions caused by the renovations and repairs.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the renovations and repairs in this residential complex, including renovations to the rental unit directly above the Tenant's rental unit, disturbed the Tenants during the period between approximately July 15, 2011 and September 30, 2011, with the exception of approximately 1.5 weeks when the rental unit was vacant.

Every tenancy agreement contains an implied covenant of quiet enjoyment. A covenant for quiet enjoyment may be spelled out in the tenancy agreement; however a written provision setting out the terms in the tenancy agreement pertaining to the provision of

quiet enjoyment cannot be used to remove any of the rights of a tenant established under the Legislation. If no written provision exists, common law protects the renter from substantial interference with the enjoyment of the premises for all usual purposes.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment. It is always 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 or to compensation for being unable to fully enjoy the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations.

In my view, the Tenant is entitled to some compensation from noise disturbances caused by the renovations/repairs to the upper unit and to the residential complex. It is always difficult to assess the amount of compensation due to a Tenant in such situations as tolerance levels differ from one individual to another and because I am unable to personally assess the frequency, level, and duration of the construction noises in this particular situation.

I find that the Tenant is entitled to compensation of \$100.00 per week for the breach of the quiet enjoyment of the rental unit. In determining the amount of compensation due I was influenced by the fact that the majority of the construction noise occurred during that day when most people are awake although it was exacerbated by the fact that it included concrete drilling and that the Tenants had a small child whose sleep patterns could be impacted by daytime noise.

In determining the compensation due, I have placed no weight on the Tenant's concerns that their security was breached by the absence of a building permit or by the fact that their unit was left unattended for at least thirty minutes. I placed no weight on these concerns because I find that there was no evidence to substantiate such concerns as I accept the workers were likely in the vicinity while the unit was unlocked; that nothing was stolen from the rental unit; and that the absence of a building permit does not necessarily mean that the renovations are being completed unsafely.

As the Tenant's quiet enjoyment of the rental unit was breached for a period of approximately 11 weeks, less the 1.5 weeks they were not residing in the rental unit, I find that they are entitled to compensation of \$100.00 for 9.5 weeks, which equates to \$950.00.

Conclusion

I find that the Tenant has established a monetary claim, in the amount of \$950.00, which represents compensation for a breach of their right to the quiet enjoyment of their rental unit. I find that the Landlord has already paid \$875.00 as compensation for this breach, and that this claim must therefore be reduced by this amount.

Based on these determinations I grant the Tenant a monetary Order for the amount of \$75.00. In the event that the Landlord does not comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

I decline to award the Tenant compensation for the cost of filing this Application for Dispute Resolution. As the Landlord clearly demonstrated a willingness to compensate the Tenant, I find that the parties would likely have been able to reach a settlement to this dispute without the need for a dispute resolution hearing if the Tenant had not been seeking such an extravagant amount of compensation.

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: December 28, 2011.

Residential Tenancy Branch