



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

This hearing dealt with an application by the tenant for a monetary order, an order compelling the landlord to comply with the Act, an order permitting the tenant to reduce his rent and recovery of the filing fee. Both parties participated in the conference call hearing.

At the hearing when I asked the tenant to clarify how the landlord was not complying with the Act and what kind of order he was seeking, the tenant stated that as the application arose from construction issues and as the construction will continue regardless of his application, he believed an order was unnecessary. I therefore consider the request for an order compelling the landlord to comply with the Act to have been withdrawn.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Should the tenant be permitted to reduce his rent?

Background and Evidence

Many of the facts were not in dispute. The tenancy began in July 2012. The residential property is a multi-storey building in which the rental unit is located on the 10th floor. Construction on the building began in October 2011 and involved such projects as creating a wheelchair ramp, re-roofing and re-piping. When the tenant viewed the property prior to beginning his tenancy, the ceiling had been removed in the hallway outside the rental unit and he was advised that there was piping work underway.

The tenant claimed that he had not been advised that the entire building, including the rental unit, would be re-piped and stated that had he known that there would be work required in the rental unit, he would not have entered into the tenancy. The tenant claimed that he has severe asthma which is aggravated by environmental factors such as dust.

The tenant testified that two weeks after he moved into the unit, he heard construction activity in the front of the building which has continued on and off to the date of the hearing. He further testified that he was unaware that there would be any work done in his unit until he received a written notice in mid-August. When I asked the tenant to describe how the construction work, other than the re-piping, had affected him, the tenant replied that he could hear the noise, which included jackhammering.

The landlord acknowledged that the construction was ongoing but stated that it was his belief that the tenant had been advised at the outset of the tenancy that construction work was being done generally in the building and that the individual units were scheduled to be re-piped. He stated that even if the tenant hadn't been told that re-piping would be done in the rental unit, he was aware that there was some degree of re-piping occurring as he had seen that the pipes in the common hallway had been exposed.

The tenant testified that he received a written notice advising that work would commence in his suite. He claimed that the notice did not specify the date on which the work would commence. Neither party provided a copy of the actual notice given to the tenant. The landlord provided a copy of the form of the notice, which has a blank space in which the individual issuing the notice can indicate a specific date. The landlord provided a written statement from the site foreman in which the foreman stated that on August 17, the tenant was given a notice advising that work would commence on August 21.

The tenant testified that at 8:00 on the morning of August 21, he was in the midst of an asthma attack when the plumber knocked on the door. The tenant asked him to wait for 30-45 minutes and after the tenant had taken a shower, the plumber pounded aggressively on the door and made a statement which the tenant perceived as a threat. The tenant testified that the plumber said that he would be shutting the water down to work. The tenant eventually admitted the plumber into the rental unit and complained to the landlord that the plumber had been rude.

The landlord provided a schedule showing that contractors spent a total of 28 hours in the rental unit, that time having been spread over approximately 3 ½ weeks. The tenant agreed with the schedule and testified that during that period, the mirror in the bathroom had been removed, drywall was removed from both the bathroom and bedroom and 2 doors were removed. The tenant provided photographs and videos showing the work done both inside and outside the rental unit.

The tenant pays \$1,645.00 per month in rent (which includes a \$45.00 parking fee) and seeks recovery of 3 full months' rent and parking.

Analysis

Section 28 of the Act provides that tenants are entitled to quiet enjoyment which includes reasonable privacy and freedom from unreasonable disturbance. Residential Tenancy Policy Guideline #6 outlines the right to quiet enjoyment and provides that in order to attract compensation, the breach must represent a substantial interference with the use and enjoyment of the rental unit.

The Policy Guideline provides in part as follows:

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.

I accept that the renovations which took place and are still underway at the residential property and in the rental unit were necessary. I further accept that the workmen gave sufficient notice of entry and that they acted professionally and minimized their impact on residents and cleaned up after themselves each workday. I find it more likely than not that the tenant received notice that the plumber would be entering the unit on August 21 and I find as a fact that informing the tenant that water would be turned off cannot be characterized as a threat. I find insufficient evidence to show that the plumber's actions were rude or inappropriate.

Despite these findings, it is apparent from the video and photographic evidence and from the tenant's testimony that the tenant experienced some inconvenience during the 3 ½ week period in which work was being performed in the rental unit. The tenant's bathroom and bedroom were affected and he did not have the level of privacy he should have expected. Although the tenant mentioned that he has severe asthma which is aggravated by construction work, he provided no medical evidence showing the impact of the construction on his condition. However, it is clear that there was still an impact in terms of inconvenience and loss of privacy and I find that the impact on the tenant during this period was significant enough to attract compensation.

As for the work in the remainder of the building, I am not satisfied on the evidence that this work or the noise produced by it created a substantial interference with the use of the rental unit and residential property. The tenant merely said that he could hear the noise and I find that merely hearing noise without evidence that there was some impact on the tenant's health or daily activities is not sufficient to establish a claim for loss of quiet enjoyment.

I find the tenant's claim for the return of 3 full months' rent to be excessive as there is no evidence that he was unable to cook, sleep or store his belongings in the unit during the 25 day period for which I have found he is entitled to compensation. The tenant provided no evidence to show that his parking was in any way affected, so I have based his compensation on the \$1,600.00 rent portion of his monthly payment. In a 30 day month, the tenant pays approximately \$53.53 per day. He was affected by the repairs for 25 days. The tenant paid approximately \$1,338.25 in rent during that 25 day period and I find that a return of 20% of the rent paid will adequately compensate him. I award the tenant \$267.65.

As the work in the rental unit is completed and as I have found that I find that the work outside the unit has not constituted a substantial interference, I dismiss the claim for compensation for disturbance before and after the work was performed in the unit and the claim for a reduction of rent.

As the tenant has been somewhat successful in his application, I find that he should recover one half of the \$50.00 filing fee paid to bring his application and I award him \$25.00.

Conclusion

I award the tenant \$292.65 which represents \$267.65 for loss of quiet enjoyment and \$25.00 for the filing fee. This sum may be deducted from a future rental payment.

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: September 28, 2012

Residential Tenancy Branch