



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landrise Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, RR, FF

Introduction

The applicants are separate tenants in a twenty nine unit apartment building. They each apply for compensation and related relief for alleged damages resulting from renovation and repair work conducted in the building. The applicant tenant Ms. L. also complains of a mouse problem in her apartment.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either applicant has been unreasonably disturbed by the work and has suffered some loss or inconvenience as a result?

Background and Evidence

The applicant tenant Mr. Z. started his tenancy in November 2012. His monthly rent is \$800.00. He paid no deposit.

The applicant tenant Ms. L. started her tenancy in December 2013 and her monthly rent is \$860.00. The landlord holds a \$440.00 security deposit from her.

The work conducted by the landlord appears to be a complete replacement of the water lines in the building, as well as the renovation of bathtub/shower areas in nine suites, including Ms. L.'s apartment.

The work appears to have commenced between November 9 and November 12, 2014. It is not clear when the work ended but it appears to have continued up to the January 9, 2015 dated of the applications.

Mr. Z. testified through the translator that he was not given proper notice of the work. He is concerned that the insulation removed from the ceiling of the lobby of the apartment building contained asbestos and that it was removed without a permit. He has an electrical background and claims to be familiar with the look and feel of wiring insulation containing asbestos. He played an audio recording of a conversation between a municipal building inspector and the translator Mr. K.L. The recording shows the building inspector appearing to be deliberately obtuse about the insulation, saying only that it had been analysed by the landlord after removal and that his department did everything it was supposed to do and, anyway, it was gone.

Mr. Z. says that the workers did not clean up properly. The hallways were dirty and dusty and the air quality decreased.

He says that mice started to come in the building. He did not say when. He contacted the owner who promised to attend to it but did not.

He says that on December 29, 2014 there were loud noises in his suite coming from the pipes and the noise continued until January 15th. He produced an audio recording of the noise, taken on his cell phone. He said the noise occurred 24 hours a day and that it was coming through the heating ducts from the apartment below.

Mr. Z. complains that he suffered significant noise disruption in his suite on December 14th, a Sunday, when cabinets were being installed in neighbouring apartments. He reported it to the police, believing that working on a Sunday was contrary to law.

On January 4, 2015 Mr. Z. and six other tenants in the building, including the applicant tenant Ms. L., signed a common letter to the landlord complaining regarding: lack of notice of the work, air quality and smell issues, mice, construction sound, a lack of water on December 2nd, short notice of a fire inspection, the condition of hallway carpets on the second and third floors, the area around the garbage bins beside the building, noise from pipes and concern over the removal of insulation that might contain asbestos.

The letter requested the attendance of a pest control company to inspect, the testing of the removed insulation, payment of compensation and the option to move out at the landlord's expense.

The applicant tenant Ms. L. testified through the translator that she was awakened on November 12 by machinery operating in the suite beside hers. Her suite is on the main floor of the apartment building. She says that three suites around hers were under renovation. She says she received no notice of the work. She complains that dust

started to flow into her suite when the lobby ceiling was opened up. The landlord's manager on the site, Ms. T.P. told her it would all be cleaned up once a fire inspection had been done but Ms. L. says it was not.

Ms. L. testified that the hallway and entryway on the main floor was very dirty from the work and that the dirt would get into her apartment.

She says that she discovered mice in her apartment. She noticed droppings in a cupboard and on at least one occasion, saw a mouse. She wrote to the manager Ms. T.P. asking that an exterminator be employed but the manager gave her "sticky traps" to use instead. Ms. L. says the traps have not caught any mice to the date of this hearing.

Ms. L. is also concerned that the renovation work had been commenced without all proper permits in place.

She indicates that the dust problem got better after January 15 but that the work is still going on as of the date of the hearing (February 19). She is home during the day and so during the time the work is being carried on in the building.

She testified that she went without water in her bathtub/shower for two weeks.

She is particularly worried that the insulation removed from above the lobby ceiling might contain asbestos and could be harmful to health.

In response to the tenants' evidence the landlord's building manager Ms. T.P. testified that the tenants' interpreter was not interpreting accurately what the tenants had said. She complained that he was advocating for them.

Ms. T.P. revealed that the tenant Mr. Z. had been the resident manager of the building until November 20, 2014. She took over his job as manager on December 1, 2014. She says he was well aware of the planned renovations as he had been a party to the visits by the contractor. She says he is fluent in the English language and needed no interpreter.

She testified that there had been a lot of water leakage in the building, necessitating the water line renovations. Water had been leaking from the bathroom area of Mr. Z.'s suite and he had been offered another suite at a discount during the repairs but he declined. She is of the opinion that Mr. Z.'s application is simply retaliation for the loss of his job and both applications are a "money grab."

Ms. T.P. says that the contractor hired by the landlord specializes in apartment building renovations and that he minimizes inconvenience to tenants.

Ms. T.P. testified that of all the building occupants only Mr. Z. complained of noise.

She acknowledges there was some inconvenience caused to the building's tenants but asserts that it was minimal.

Ms. T.P. produced copies of the January 4, 2015 letter signed by the seven tenants and showed that five of them had withdrawn their names from the letter. She says that some of the signers told her they felt they had been pressured by Mr. Z. to sign the document. She produced a survey she conducted of tenants in the building showing that no others appeared to have been significantly disturbed by the renovations.

She says that work was delayed when it was discovered that Mr. Z. had change the lock on his door without providing the landlord with a key. The contractor could not readily gain access using the landlord's spare key for the suite.

Ms. T.P. disputes that Ms. L went without water for two weeks. She says it was, at most, a one day inconvenience while the tub water pipe was changed. She says there were vacant units Ms. L. could have used to shower or bath. Only one tenant called about lack of water to shower and that tenant was offered access to an empty suite.

She says that there was no pipe noise as alleged by Mr. Z. She says that Mr. Z. called her at midnight on or about January 2 complaining about pipe noise. Her contractor attended the next day but could not hear any such noise.

Regarding mice, Ms. T.P. testified that it had been an issue before. When Mr. Z. was the building manager he had put box traps around the building and had given his co-applicant Ms. L. traps for mice a couple of months prior to December 1, 2014. She says that she consulted a pest control company about mice in the building and that as a result she issued traps. She says that a building inspector confirmed that any mouse problem was "under control."

Mr. H., the owner, testified that the work started around November 11 and that there were no complaints related to the work until after November 30 and the end of Mr. Z.'s employment.

The landlord's contractor Mr. B.N. gave evidence. He testified that each tub renovation took two days only and that water to the other facilities in each suite was never off.

He says that he dedicated one of his employees to the full time task of cleaning and that the apartment building and suites were left clean at the end of work each day.

In rebuttal, Ms. L. stated that she'd signed the January 4th document in order to resolve her mice issue. She says that Mr. Z. had given her sticky traps while he was the manager. She says that in January she confronted the manager Ms. T.P. about the mouse issue as was told to move out. She said there was a constant cloud of dust for two months.

Mr. Z. in rebuttal stated that he did not consider it to have been part of his job to notify the building tenants of the renovation work. He indicated that in his opinion the noise he heard violated a noise by-law. He admits to changing the lock on his door. He felt that workers were entering without permission or notice and further, that someone had broken into the building and he felt unsafe.

Analysis

Lack of Notice of the Renovation Work

It has not been demonstrated that prior notice to either applicant of the nature and extent of the renovation work in the building would have changed any of the foregoing narrative. Whether there was prior notice or not, the question still remains: did the renovation work unreasonably disturb the applicant tenants and did they suffer damages as a result.

Insulation

The onus of proof that the insulation removed from above the lobby ceiling contained asbestos and was harmful is on the persons alleging it; the tenants in this case. Mr. Z. has retained a sample of it and could have had it tested for this hearing. The landlord produced an expert analysis purporting to show that the insulation did not contain asbestos. On this evidence I find that it has not been proved that there was asbestos in the insulation.

The tenants might feel that the landlord should have tested the insulation before removal and should be punished or penalized for not doing so. Similarly, they might feel that the landlord failed to obtain proper or necessary permits before commencing the work and should be punished or penalized for not doing so.

I make no determination about those two things and simply note that it is not for a Residential Tenancy arbitrator to impose such penalties or punishments. Rather, it is

the arbitrator's task to determine whether or not there has been a breach of *Residential Tenancy Act* (the "Act"), the tenancy agreement or the law and whether damage or loss have resulted.

Renovation Interference

A tenant pays rent to enjoy the amenities of their apartment and apartment building. Significant interference with that enjoyment as a result of actions within the control of a landlord can result in an award of damages against that landlord.

At the same time, a landlord is compelled by s. 32(1) of the *Act* to provide and maintain residential property in a state of decoration and repair that (a) complies with the health, safety and housing standards required by law, and (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

A tenant must be prepared to put up with minor inconvenience related to the landlord carrying out its duty to maintain and repair.

In this case I find that the inconvenience and interference claims brought by both applicants to be within the scope of minor inconvenience normally associated with the landlord's maintenance and repair obligations.

I am lead to this conclusion by the landlord's evidence of canvassing other tenants who denied suffering significant inconvenience and the withdrawal of support by five of the seven tenants signing the January 4 complaint letter. I am also influenced by the tenant Mr. Z.'s lack of candour in failing to mention that he was the building manager when the renovations started. That is a fact he should have been forthright about and his failure to disclose it casts a shadow on his testimony.

On the competing evidence of Ms. L. and the contractor, I find that the dust and dirt associated with the renovation was a minor inconvenience reasonably associated with the landlord carrying out its maintenance and repair obligations, not warranting compensation.

Mr. Z. has not proved on a balance of probabilities that there was significant noise in his unit caused by the renovation work.

The excess garbage and mess around the garbage bins appears to be what one might expect as renovation debris is collected for removal. No particular damage or loss was alleged or referred to by either tenant as a result of the garbage build up.

Mice

I find that the both tenants have seen mice in their suites. I consider it not unlikely that the renovation work has temporarily exposed the apartments to new entry opportunities for mice. The landlord responded by issuing sticky paper traps, apparently the same

solution implemented by Mr. Z. when he was the building manager. Mr. Z. has been using a sticky trap and caught a mouse with it in February 2015, as shown by the video clip he submitted. I conclude that the sticky traps are reasonably effective. Ms. L. has been using the sticky traps but has not caught a mouse since the renovation work started. I conclude that her mouse problem, if any, is inconsequential at this point.

Conclusion

The applications of both tenants are dismissed.

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: March 03, 2015

Residential Tenancy Branch

