



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MASSEY PLACE
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, PSF, RR, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by its agents who are both employees of the landlord. The landlord called one witness, DH, who is the site foreman.

The agent AP testified that the tenant personally served DD with the dispute resolution package. DD is an employee of the landlord. On the basis of this evidence, I am satisfied that the landlord was served with the dispute resolution package pursuant to section 89 of the Act.

The agent AP testified that the landlord served all its evidence to the tenant by registered mail. I was provided with a Canada Post tracking number that showed the same. The tenant confirmed service. On the basis of this evidence, I am satisfied that the tenant was served with the landlord's evidence pursuant to section 88 of the Act.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement? Is the tenant entitled to an order to the landlord to provide services or facilities required by law? Is the tenant entitled to a reduction in rent for a reduction in the value of the tenancy agreement? Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here.

This tenancy began 1 November 2013. Current monthly rent of \$1,220.00 is due on the first. The rental unit is occupied by the tenant and his son.

The residential property in which the rental unit is contained is undergoing major upgrades of the plumbing system. There are 190 units being re-piped in this upgrade. The agent SE testified that the owner of the residential property wanted a permanent fix to the issues of leaking and flooding in the building. The agent SE testified that this project costs approximately \$1,000,000.00. The agent SE testified that the work is being completed in such a way as to minimise invasiveness. The agents both testified that these repairs were necessary and would benefit all the residents of the building. The agent AP testified that the re-pipe benefits residents of the building as it prevents leaks and floods.

On 5 November 2014, the landlord provided notice to the tenant of the residential property that the upgrade work was going to occur. On 13 January 2015, the contractor provided notice to all of the residents of the residential property that an information reception would be held 20 January 2015. The agent AP testified that the tenant did not attend this information reception. On 20 January 2015, the contractor provided an information package to the tenant. The package included a letter to the tenant that plumbing work would begin on 3 February 2015 in the rental unit. The package included reference to "Working Days", which was defined to be between 0800 and 1600, Monday through Friday. The letter provided contact information for the site

foreman. The agent SE testified that the tenants are notified of the work schedule on a general notice board in the lobby.

Work on the residential property began 26 January 2015.

The agent AP testified that the tenant contacted DD on 28 or 29 January 2015 to ask for a reduction in rent. The tenant testified that he contacted DD to ask for a reduction in rent. DD rejected the tenant's request. DD advised the tenant that he could contact another employee CE to discuss the issue. CE told the tenant that the tenant's rent would not be reduced.

The tenant testified that he works graveyard shifts from 2000 to 0400. The tenant testified that his son works graveyard shifts from 2200 to 0600. The tenant testified that every day since the commencement of the project on 26 January 2015 he has been disturbed by construction noise. The tenant testified that the noise is causing him sleep disruption, which has led to the tenant calling in sick to work on one day and leaving work early on two other days. The tenant testified that it is not just when the workers are in his unit that his sleep is disturbed. The tenant testified that he can hear when the workers are working in other units. The tenant testified that the building is a wood-frame building and that noise carries easily between units. The tenant testified that ear plugs are not enough to block out the noise. The tenant testified that the work vibrates his bed.

The agent AP testified that the workers arrived at the rental unit on 3 February 2015. The agent testified that the witness was able to make arrangements with the tenant to enter the rental unit on 12 and 13 February 2015. The agent AP testified that the workers arranged to work on the tenant's days off. The agent AP testified that the workers entered the rental unit after 1300. The agent AP testified that the water in the rental unit was only shut off in one area at a time and that she believed that the tenant would have had access to the other washroom when one washroom was being worked upon. The agent AP testified that workers entered into the rental unit on three days to upgrade the plumbing for a total of approximately 19 hours:

- 3 February 2015;
- 12 February 2015; and
- 13 February 2015.

The witness testified that his workers entered the rental unit on three days for the purpose of completing the project:

- 3 February 2015 for 6 to 7 hours;
- 12 February 2015 for 6 to 7 hours; and
- 13 February 2015 for 6 to 7 hours.

The witness testified that the water was off to the rental unit on these days. The witness testified that the water was off to the entire residential property for 18 February 2015 and 20 February 2015 for the purpose of inspections.

The tenant testified that the workers have been working in his rental unit for three days from approximately 0800 to 1600. The tenant testified that the water to the rental unit was off for these days. The tenant testified that on other days the water to the rental unit was shut off. The tenant testified that the water was shut off for five days. The tenant testified that Sunday and Monday were his days off and that 12 and 13 February were not his days off.

The tenant testified that on the days the workers were upgrading the plumbing in the rental unit, the tenant did not have use of the plumbed amenities. The tenant testified that he had to use the restrooms of local restaurants while the water to the rental unit was turned off. The tenant testified that he had to eat at restaurants when there was no access to water. The tenant testified that there were five days where he did not have access to either washroom in the rental unit.

The tenant testified that the drywall has been removed in his kitchen and bathroom in order to access the plumbing. The tenant testified that there are three large holes in his kitchen walls, holes in the hallway walls, and holes in the walls and ceiling of the washroom. The tenant testified that he gets cold in the shower because the holes let in drafts.

The agent AP testified that the workers accessed the kitchen piping through the kitchen instead of the second bedroom to accommodate the tenant's son.

The tenant estimated that workers were in his home approximately three to four days per week to inspect the pipes to see if they were leaking. The tenant testified that the workers were coming at all hours, including before 1300. The tenant testified that this has resulted in a loss of privacy. The tenant testified that the workers entered the rental unit on 11 February 2015. The witness confirmed that workers had entered into the rental unit on days other than the days they were completing work. The witness provided testimony that the workers did not complete work in the rental unit on 11

February 2015. The agent AP testified that the workers were only in the rental unit when work was being completed. The agent AP testified that workers do not need to enter the rental unit to see if pipes were leaking and that work was not carried out in the rental unit on 11 February 2015. The agent AP testified that there were two inspections of the rental unit that occurred 23 February and 24 February 2015 for approximately thirty seconds. The agent AP testified that work was completed after 1300 to accommodate the tenant's schedule. The witness testified that the future work was to be done after 1300.

The agent AP testified that the plumbing work is completed. The agent AP testified that there are eight hours of work to complete in respect of the drywall. The witness testified that there are eight hours left of work to install the drywall and that there is additional work in respect of mudding and painting that will require entry over three additional days.

The witness testified that the following work has been completed on the rental unit:

- cut drywall;
- re-plumbed; and
- plumbing inspection.

The witness testified that there remain two further inspections.

The witness testified that the following work remains outstanding in the rental unit and provided me with estimates of the time required for the outstanding work:

- eight hours of drywall installation that can be completed in one day with the tenant's permission to work before 1300;
- two to three hours of mudding to be completed after the drywall is installed;
- three hours of sanding and mudding to be completed two days after the first coat; and
- three to four hours of sanding and painting to be completed 24 hours after the second coat of mudding.

The witness estimated that all work would be complete in the residential property by mid-March.

The agent AP testified that it is not uncommon to find tenants that work night shifts and that the contractors are experienced at working with these tenants. The agent SE testified that the tenant missed his opportunity to seek further accommodation when he did not attend the 20 January 2015 meeting.

The tenant seeks a rent abatement for 100% of his rent.

Analysis

The tenant's claim is essentially a claim for compensation for past and future interference with the tenant's right to quiet enjoyment pursuant to section 28 of the Act as well as compensation for the landlord's failure to provide a rental unit that complies with section 29 of the Act.

There are several conflicts in testimony that arise from the testimony provided by the parties in this application.

The witness testified that the water had to be turned off to the entire unit to complete work. This contradicts the evidence of the agent AP. I prefer the evidence of the witness because he has personal knowledge about the state of the work; the agent's evidence was based on hearsay and illustrates the problems of reliability inherent in that type of evidence. As the agent AP testimony shows reliability problems, I have put little weight on her evidence of which she does not have direct knowledge and prefer the evidence of others where the agent AP's testimony conflicts with either the witness or the tenant.

The tenant testified that the workers were working in the rental unit on days other than his days off and that work occurred on 11 February 2015. The tenant testified that the work occurred before 1300. The witness testified that work did not occur on the rental unit on 11 February 2015. The witness testified that future work was to occur after 1300, but provided work hours on 12 and 13 February 2015 that were prior to 1300. AP testified that work occurred after 1300 on the 12 and 13 February 2015 to occur on the tenant's days off. The testimony has conflicts. I find that the work did not occur on the tenant's days off and occurred before 1300. I find that the workers did not enter into the rental unit on 11 February 2015. I find this because the tenant testified that the workers were working for three days, not four and also because I find the witness to be highly reliable. Additionally, "Working Days" is defined as Monday through Friday, which means that Monday is the only day that is both a Working Day and the tenant's day off: 12 February fell on a Thursday and 13 February fell on a Friday.

The agent AP testified that the workers reinserted the insulation and covered the drywall holes with plastic. The witness testified that the workers applied a seal to the edge of the drywall to prevent dust and would assist tenants to cover the drywall holes if the tenants asked. The tenant testified that there were open holes into his walls that were uncovered. As discussed above, I put little weight on hearsay evidence provided by the agent AP and find that the holes in the rental unit were not covered with insulation or plastic.

The agent AP testified that the workers were only in the rental unit when they were conducting active work and had no need to be in the rental unit to conduct inspections. As discussed above, I put little weight on hearsay evidence provided by the agent AP and find that workers entered the rental unit before 1300 on 12 and 13 February 2015 and that the workers entered into the rental unit on days other than the days they were conducting work on the rental unit.

On the basis of the evidence provided by the tenant, the landlord's agents, and the witness, I make the following findings of fact:

- The tenant has experienced ongoing noise interruption from 26 January 2015 to 20 February 2015 on "Working Days" while the workers conduct repairs, which has disrupted the tenant's sleep, and resulted in missed work.
- The tenant has experienced five days without water, which resulted in his kitchen and bathroom being unusable.
- The tenant has experienced repeated entries of workers and inspectors into the rental unit over the course of 3 February to 20 February 2015, which resulted in a loss of privacy.
- The tenant has lived in a rental unit that was under construction for the period of 3 February to 23 February 2015, which caused the tenant discomfort.

Section 28 of the Act sets out the tenant's right to quiet enjoyment:

A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;...

Residential Tenancy Policy Guideline, “6. Right to Quiet Enjoyment” (Guideline 6) provides greater direction on the tenant’s right to quiet enjoyment:

Frequent and ongoing interference by the landlord, ... may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of: -

- entering the rental premises frequently...;
- unreasonable and ongoing noise;...

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

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. ...

[footnotes omitted; emphasis added]

In this case, I find that the noise interruptions and repeated entries by workers and inspectors have resulted in a breach of the tenant’s right to quiet enjoyment. The length of the noise interference is of such duration that it becomes a serious interference with the tenancy. The agent noted that this is a major upgrade and is not routine maintenance. I am mindful of the agents’ evidence about the necessity of this upgrade; however, the necessity of the repairs does not negate the tenant’s right to quiet enjoyment. Accordingly, the value of the tenancy has undoubtedly been reduced over the course of the repairs.

Subsection 32(1) 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 the tenant. Multiple holes in the drywall throughout the rental unit are a breach of subsection 32(1) of the Act as the rental unit was not in a suitable state of decoration and repair.

Section 67 of the Act provides that, where an arbitrator has found that damages or loss results from a party not complying with the Act, an arbitrator may determine the amount of that damages or loss and order the wrongdoer to pay compensation to the claimant. The claimant bears the burden of proof. The claimant must show the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the Act by the wrongdoer. If this is established, the claimant must

provide evidence of the monetary amount of the damage or loss. The amount of the loss or damage claimed is subject to the claimant's duty to mitigate or minimize the loss pursuant to subsection 7(2) of the Act.

Guideline 6 sets out that I should consider 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 in determining the reduction in the value of the tenancy. Further, *Residential Tenancy Policy Guideline*, "16. Claims in Damages" states:

If a claim is made by the tenant for loss of quiet enjoyment, the arbitrator may consider the following criteria in determining the amount of damages:

- the amount of disruption suffered by the tenant.
- the reason for the disruption.
- if there was any benefit to the tenant for the disruption.
- whether or not the landlord made his or her best efforts to minimize any disruptions to the tenant.

In this case, the tenant has experienced significant and lengthy disruption. The damage experienced by the tenant is greater because of his work schedule. I accept the agents' evidence that the repairs are necessary and in the best interest of the property and the tenants. The repairs to the residential property are repairs for which the landlord is responsible for pursuant to section 32(1) of the Act. It is true that the tenant may gain a marginal benefit of fewer floods, but I am not convinced by the landlord's evidence that this is a benefit to which the tenant is not entitled in any event. I find that the landlord is doing everything possible to minimize the impact on the residents of the residential property.

The landlord's arguments with respect to the tenant's mitigation are unsuccessful as the agents testified that the landlords are conducting the process in a way that minimally impacts the tenants. It is not open to the landlord to simultaneously argue that the work is minimally impairing the tenant's quiet use and enjoyment while suggesting that his participation in the 20 January 2015 meeting would have resulted in even less impairment.

Paragraph 65(1)(f) of the Act allows me to issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

The tenant's position is that he should not have to pay rent at all. I find the tenant's position of a 100% rent abatement excessive.

I am mindful that mathematical accuracy in calculating damages is an impossibility in this case; however, this does not relieve the landlord of its obligation to pay damages for its breach. Although I have used a formula to calculate the tenant's damages, I have considered the global award in relation to the landlord's breach and determined that it is appropriate.

After consideration, I find that the value of the tenancy was reduced by 50% for the days in which water service was terminated to the rental unit. I find this because termination of water service to the rental unit resulted in the kitchen and bathroom being unsuitable for their intended uses. Further, the tenant had to make use of restaurant washroom facilities and incurred costs of eating out. I value the noise interference at 10% of the value of the tenancy. This amount recognizes that the impact on the tenant is greater because of his work schedule. I value the diminishment in the tenancy for the landlord failing to provide a rental unit that meets the standards of decoration and repair at 5% as the interference was not severe.

I calculate the past diminishment of the tenancy in the following manner:

1. I find that the tenant's daily rent is \$40.11.
2. I find that the value of the tenant's tenancy was reduced by \$222.61:

Item	Amount
5 Days Without Water at 50% per day	\$100.27
20 Days of Noise Interferences and Privacy Loss at 10% per day	80.22
21 Days of Non Compliance With Decoration and Repair at 5% per day	42.12
Total Diminished Value	\$222.61

I order that the value of the tenant's tenancy from 26 January 2015 to 23 February 2015, inclusive, was reduced by \$222.61.

I find that the value of the tenant's tenancy in the future may be calculated on the following basis:

1. The tenant is entitled to reduce his rent in the future by \$48.13 for the drywall and painting repairs, that is a 30% rent abatement for four days.
2. The tenant is entitled to reduce his rent by \$20.00 as compensation for the continued non-compliance with standards of decoration and repair from the date of this hearing to 15 March 2015, the date by which the landlord estimated all repairs would be complete.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$50.00 filing fee paid for this application.

Paragraph 72(2)(a) of the Act sets out:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other...the amount may be deducted...in the case of payment from a landlord to a tenant, from any rent due to the landlord...

In summary:

1. I order that the tenant is entitled to reduce his rent by the amount of \$340.74 on the following basis:

Item	Amount
5 Days Without Water @ 60%	\$100.27
20 Days of Noise Interferences and Privacy Loss @ 5%	80.22
21 Days of Non Compliance With Decoration and Repair @ 5%	42.12
4 Days of Drywall and Painting @ 30%	48.13
Non Compliance With Decoration and Repair from Hearing Date to 15 March	20.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$340.74

These findings are made on the specific evidence before me and the individual circumstances of the tenant. This outcome would not necessarily be the same for another resident of the same building.

Conclusion

I issue a monetary award in the tenant's favour in the amount of \$340.74. To implement this award, the tenant is permitted to deduct \$340.74 from a future monthly rent payment. The tenant's obligations pursuant to section 26 of the Act will be satisfied by remitting his rent net of the ordered amount to the landlord.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: March 3, 2015

Residential Tenancy Branch