



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Heritage APT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for the Landlord to comply - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to an order that the Landlord comply?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in January 2015. Rent of \$1,400.00 is payable monthly.

The Tenant states that at the outset of the tenancy the Landlord did not inform the Tenant of upcoming construction and that such construction started at the end of April 2015. The Tenant states that the Landlord was informed at the onset of the tenancy that the Tenant worked nights. The Tenant states that the construction is carrying out drilling on the building and that the noise is so loud that it is harmful. The Tenant states that the noise occurs each week-day during the day and is so loud that it penetrates the Tenant’s industrial ear plugs and measures over 90 decibels. The Tenant states that the plugs lessen the noise a bit but not the vibrations to the

building which shake the bed and wake the Tenant. The Tenant states that as a result of the noise the Tenant has lost sleep which has affected his health and ability at work. The Tenant states that he has tried to get sleep by sleeping in his car, on the apartment lobby couch, on a park bench next door and at the YMCA.

The Tenant states that the construction company is "all over the place" and does not carry out the work when and as posted on their notices in the building. The Tenant states that the drilling done on the opposite of the building from his unit is only slightly less loud and that while the non-stop drilling has stopped on his side, it now occurs on the other side.

The Tenant states that the Landlord reimbursed the Tenant \$420.00 for the loss of quiet enjoyment for May 2015 and \$1,400.00 for June 2015. The Tenant claims additional compensation of \$700.00 for May and ongoing compensation of \$1,400.00 for each month from July forward until the construction is completed.

The Tenant states that he suffers from a medical condition that is exacerbated by the Tenant's exposure to the noise and the loss of sleep and that he is being monitored by his physician as a result. The Tenant states that they are also actively looking for another rental unit and although applications have been made they have had no success to date.

The Landlord states that the Tenant was given the rent reduction in May 2015 after the Tenant requested the reduction. The Landlord states that the Tenant did not pay rent for June 2015 and as the Landlord felt sorry for the Tenant the Landlord agreed that the rent was not payable for June 2015. The Landlord states that the Tenant did a lot of complaining about a lack of sleep. The Landlord states that the work being done on the building has taken longer than expected due to unforeseen problems with the building. The Landlord states that over a million dollars are being spent on this project and the Landlord cannot stop the construction for one Tenant. The Landlord states that there are no other tenants complaining about the noise that now is limited to patching and sanding noise. The Landlord states that the drilling noise started at the end of April and was completed before the end of July 2015. The Tenant states that this was only the drilling on his side of the building and that the drilling continues on the other side and is just as loud. The Landlord agrees that sometime while patching the drilling occurs as well and that there were some occurrence of loud noise in August and not as many as in May

and June 2015. The Landlord states that they are aware that the Tenant works nights and have suggested that the Tenant wear earplugs. The Landlord states that out of 164 apartment units only 3 tenants are not happy.

The Landlord states that the completion of the drilling and sanding is expected at the end of September 2015. The Landlord states that the Tenant has been offered the opportunity to move –out without notice. The Landlord states that the Tenant is not entitled to compensation as the Tenant has been sufficiently compensated already and because the Tenant's complaint of ill health is baseless and unsupported.

The Tenant states that over 100 tenants gathered in the lobby for a meeting over the noise, that signs are posted everywhere around the building saying "stop construction" and "reduce rent". The Tenant states that the company carrying out the work is disorganized and erratic, that the work is sporadic and haphazard and not according to their posted notices and that the workers are smoking pot. The Landlord states that there was a meeting of 20 tenants outside the office door but that no letters of complaint and no other applications for dispute resolution have been received.

Analysis

Section 7 of the Act provides that where a landlord does not comply with the Act, regulation or tenancy agreement, the landlord must compensate the tenant for damage or loss that results. In a claim for damage or loss, the party claiming costs for the damage or loss must prove, inter alia, that the damage has occurred. Although I accept that the Tenant has a pre-existing medical condition, without supporting medical evidence I find that the Tenant has not established that this condition was exacerbated or made worse by the noise or lack of sleep. I do accept that the Tenant has substantiated that the Landlord has not provided the Tenant with quiet enjoyment of the unit and that the Tenant has established a loss of use of the unit for sleep purposes however the Tenant has not provided evidence of any costs associated with the loss. I find therefore that the Tenant's compensation is limited to a devaluation of the worth of the unit.

Considering the significant value associated with a quiet unit for sleep purposes but noting also the otherwise full value of the unit to the Tenant, I find that the Tenant is entitled to reasonable

compensation of **\$500.00** per month for the period May to September 2015 inclusive for a total of **\$2,500.00**. As the Tenant has already been compensated by **\$1,860.00** I find that the Tenant is entitled to the remaining amount of **\$640.00**. Should the construction noise continue past September 30, 2015, the Tenant has leave to reapply for additional compensation. As the Tenant made no submissions or provided no evidence in relation to an order for the Landlord's compliance I dismiss this claim. The Tenant is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$690.00**. The Tenant may satisfy this claim by deducting it from future rent payable.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$690.00**. If necessary, this order may be filed in the Small Claims Court 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: September 18, 2015

Residential Tenancy Branch

