



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, RR, O, FF

Introduction

The tenant applies for a monetary award and a rent reduction claiming that certain remediation and renovation of the apartment building in which he lives has and is significantly interfering with his use and enjoyment of his rental unit.

All parties attended the hearing, the landlord represented by its legal counsel, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Has the landlord caused excessive noise and disturbance in and around the apartment building so as to unreasonably disturb the tenant's use and enjoyment of his rental unit? If so, what damages if any has the tenant suffered as a result?

Background and Evidence

The rental unit is a bachelor apartment in a high rise apartment building of thirteen storeys encompassing 121 apartments.

The tenancy started November 1, 2015. The monthly rent was \$755.00 but was increased effective November 1, 2016 to \$776.90. Rent is due on the first of each month, in advance. The landlord holds a \$377.50 security deposit.

Significant renovation work is being conducted on the building. Ms. S.F. testified for the landlord. She is the project engineer. She says that some of the balcony concrete was determined to be unsafe and the balcony guardrails do not meet code.

In order to complete the work it is necessary to use jackhammers to chip away at the concrete. If the work progresses on schedule she expects that jackhammering will cease in January 2017. After that new guardrails will be installed. That work involves the use of hammer drills.

Each rental unit above ground level on three of the four sides of the building has such a balcony.

The tenant testifies that the work, most particularly the jackhammering is making his rental unit virtually unusable during the day. In addition to the noise there is significant disruption about the building, with workers, some of whom he finds to be unpleasant, moving about and big machinery like diesel generators operation outside.

He says street parking has been limited, though it is not apparent the tenant uses that parking or even owns a vehicle.

He says there has been reduced access to the elevators in the building as workers are using them during the day.

The tenant says that common areas are not as clean as they were before the work started and that the swimming pool for the building opened two weeks later than usual.

He indicates that he was not informed of the renovation work when he moved in.

He is concerned about asbestos exposure and health issues related to the fine particle silica in the concrete and lead in the paint.

He feels like his rental unit is "under siege." The jackhammer impact transfers through the old building and into his unit. He describes it as "earsplitting." He says he can physically feel the jackhammer work and states that he is concerned that he could suffer a concussion from the jackhammering and he may have "shaken baby syndrome" as a result.

The tenant's evidence about when the work started was not clear but I conclude that the jackhammer work on the renovation project started in June 2016. He says the jackhammer work lasts for three sessions of one to two hours every workday. In his opinion, based on his calculations of the rate of work and number of balconies, the jackhammer work will continue well past January 2017, the date indicated by the landlord's project engineer.

The tenant is a senior. His normal day starts very early; at 4:00 or 5:00 a.m. when he acquaints himself with the latest investment news and then from 6:30 a.m. to 7:00 or 800 a.m. he watches the stock markets. After that it is his habit to go back to sleep until the late morning. However, that is when the jackhammer work is being done and it prevents him from sleeping. He also listens to important and time-sensitive conference calls during the day but cannot hear them due to the jackhammering.

He uses foam earplugs to dampen the noise as well as noise reduction earmuffs. However the earmuffs interfere with his glasses and so he cannot reasonably read while wearing them. Thus it is not practical for him to read in his rental unit during jackhammer sessions.

The tenant describes himself as an amateur jazz guitarist. He says that a portion of his normal day is to practice guitar and to study music. He says the jackhammer noise significantly impairs his ability to do so.

He has consulted the local government bylaw enforcement office and a person from that office conducted an audio test to determine that the noise created by the construction work, particularly the jackhammer work was recorded at the property line. The reading obtained was just less than the limit set by bylaw. The tenant considered that the noise is greater inside the building than at the property line.

Analysis

The tenant's evidence was in large part subjective and lacking in detail in some areas. Nevertheless, I find that the tenant was sincere and truthful in describing his experience during the renovation work. Though he referred to a concern about a concussion from the jackhammer work and "shaken baby syndrome" I consider these remarks to be hyperbole and not meant to be taken literally.

Counsel for the landlord describes the tenant as a "crusader" and to be overstating his living conditions. He refers to a blog the tenant has started and in which the tenant refers to the disruption. The tenant has also had a hand in drafting a complaint letter for the building occupants to sign.

I agree. The tenant projects the persona of one who sees that others are being wronged and is willing to stand at the head of the crowd. I do not consider that this aspect of his character detracts from his claim. It was made clear at this hearing that the dispute raised by this application concerns only this tenant. The landlord's relations with other tenants, or *vice versa*, are not material to this application.

A tenant is entitled not to be unreasonably disturbed by his landlord. The Residential Tenancy Branch has incorporated that right into its interpretation of the covenant for quiet enjoyment. Residential Tenancy Policy Guideline 6, "Entitlement to Quiet Enjoyment" states

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

At the same time, a landlord is under an obligation to repair and maintain the premises. A tenant is obliged to accommodate the landlord for some inconvenience inherent while carrying out that work.

In this dispute I find that the work being conducted by the landlord goes well beyond normal maintenance and repair. It is a major renovation of a major portion of the exterior of the apartment building.

I find that the noise, inconvenience and general disruption experienced by the tenant are well beyond the level and duration a tenant might be expected to accept.

I find that since June 2016, for three to six hours of each workday the tenant's rental unit has been the subject of high levels of noise, particularly from jackhammer work and discernable vibrations from jackhammer work.

I accept the tenant's evidence about his normal daily routing and about how it has been affected during the workday. I accept his evidence about a general loss of amenity in the use of the buildings facilities and common areas by the fact of workmen and their machines.

I do not consider the tenant is entitled to advance a claim based on his view that the work crews on site are “belligerent and disrespectful.” The landlord has no obligation to a tenant regarding the manners of the worker it hires.

I do not accept the tenant’s claim that his health is being harmed by asbestos, silica or the lead in paint that could be released during the renovation work. I note that Worksafe BC, the provincial monitor for such things, imposed stop work orders pending compliance with asbestos remediation requirements, but there is no evidence before me of any harmful substance being released or that is affecting or likely to affect the health of the tenant.

I do not consider the tenant has a valid claim that the landlord intends to evict him or raise his rent because of the renovation work.

Mr. R.K. for the property manager stated at the hearing that no tenant has or will be evicted because of the renovation work.

A landlord’s power to unilaterally impose a rent increase is restricted to the annual statutory increase allowed by regulation.

A landlord may apply for a greater increase in the rent of all tenants in a building for the cost of renovations that could not have been foreseen under reasonable circumstances. I note, from the landlord’s “Baseline Property Condition Assessment” filed but not referred to at hearing, that the assessment of the need for the renovations was made “in relation to acquisition and financing of the site” and so it may be assumed that the renovations needs were known by this new landlord before it purchased the building. I make no finding in this regard however. The issue was not directly raised by the application and the document referred to above was not presented as evidence during the hearing.

In result, I find that the tenant is entitled to damages for the nuisance or diminution of “quiet enjoyment” caused by the renovation work and to a rent reduction while the work continues.

I consider the tenant’s request of a 50% rent reduction to be reasonable and moderate in the circumstances of this case. The work being undertaken at the building is causing a complete upset of the tenant’s normal weekdays. He is being prevented from carrying on both of his major daytime activities during the week.

I award the tenant the amount of \$2275.95 for recovery of half the rent of \$755.00 paid from June 2016 to and including October 2016 plus half the new rent of \$776.90 for the month of November 2016.

I direct that the tenant’s monthly rent be reduced from \$776.90 to \$388.75 from December 1, 2016 until the first of the month following the date the tenant receives a

written statement signed by the landlord's project engineer stating that the jackhammering portion of work presently occurring on the building has been completed.

This is not a determination that the tenant's loss of enjoyment will cease with the jackhammer work, though he has indicated it to be the major issue with the use of his rental unit. If his use of the rental unit continues to be significantly impaired by the renovation work after the rent reduction expires, he may make another application.

Conclusion

The tenant is entitled to a monetary award of \$2275.95 plus recovery of the \$100.00 filing fee for this application. He will have a monetary order against the landlord in the amount of \$2375.95.

The tenant is entitled to a 50% rent reduction commencing with December 2016 rent, on the terms outlined above.

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: November 24, 2016

Residential Tenancy Branch