



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 415 & 435 Michigan Apartments Limited
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MDNC, RR, O

Introduction

This hearing dealt with an application by the tenant for an order reducing past or future rent for repairs, services or facilities agreed upon but not provided. Both parties appeared and gave affirmed evidence.

The landlord had filed some late evidence, which the tenant did not admit to receiving. This evidence was excluded.

By consent of both parties the previous property manager was removed as a respondent from this application and the owner's name was amended to reflect the correct legal name.

Issue(s) to be Decided

Should the tenant's rent be reduced and, if so, in what amount and on what terms?

Background and Evidence

The rental unit is a bachelor apartment on the third floor of one of the two high rise buildings located at this property. It does not have a balcony and the view is of the neighbouring apartment building.

The tenant is a 74-year-old retired tradesman. He has lived in this unit since 1992. His monthly rent is \$720.00.30. The rent includes hot water but not hydro.

New owners purchased this property in December 2015. In January 2016 they started on an ambitious renewal program for both towers; the first major upgrades to the buildings since they were built more than fifty years ago. The renewal program includes the replacement of the exterior balconies; remediation of the exterior concrete; exterior painting; elevator modernization; corridor, lobby and entrance refurbishment; and building system upgrades. In addition, the interiors of all units are being extensively renovated as they become available.

The tenant testified that the interior work started on the lower levels of the building including the two units adjacent to his. He said that if there is construction going on within the bottom five floors of the building he can hear it.

In June the work of replacing the exterior balconies started. This work involves a lot of jackhammering. The tenant testified that when the noise is really bad the whole building reverberates. In addition to the noise of chop saws, drills, jack hammers and other power tools the hoist that takes materials up and down from the upper floors is located on the tenant's side of the building and, according to the tenant, is operating continuously all day during normal work hours.

The tenant testified that the exterior work is conducted from 8:00 am to 4:00 pm, Monday to Friday not including statutory holidays, but the interior work is often done on weekends and into the evenings.

He described the noise of the interior work as substantially less than the sound of the jackhammering but still disruptive. He did acknowledge that some days are quieter than others.

The tenant has had some other issues since the renovations started. Until January he enjoyed hot water on demand in his unit. Since January the hot water supplied to the kitchen tap is never hot enough to wash dishes. The hot water supply to the bathroom has not changed. He submitted several service requests to the previous property manager but received no response.

The tenant said that there have been a large number of unscheduled water shutoffs in the building. Each shutoff lasts four to five hours. As a sample he said there had been unscheduled water shutoffs on September 3, 4, 5, 12, 15, and 29; and October 9, 11, 12, 14, 20 and 26. The tenant testified that he understood that these were all emergency shutoffs and that was why the landlord was not able to give advance notice. He said the lack of notice was not an issue for him but the frequency of the shutoffs was.

The landlord confirmed that because of the age of the building there are not individual shutoffs for each unit; if there is a problem the whole building has to be shut down.

There have been five water leaks in the unit; three were in September and October. The tenant reported the situation to the old caretaker but nothing was done.

The tenant acknowledged that the new property manager is an improvement over their predecessors and that they are making an effort to better inform the residents. One of the new managers had recently been to his unit and looked at the water damage. That individual testified that they will be attempting to address the tenant's concerns.

The tenant testified that his daily routine has changed since the construction started. He loves to read and used to go to the local library a couple of times a week. Now he goes every morning and stays there until 1:00 or 2:00 pm. Once he returns home he wears ear plugs until the work is finished for the day.

The tenant expressed some concerns about whether building security is being properly maintained during this project but acknowledged under cross-examination that he has not personally experienced any unpleasant situation.

The tenant also described how the lack of information from the previous property managers has led to a lot of anxiety about whether he will be allowed to continue his tenancy in this building and the effect this anxiety has had on him.

The landlords were at a real disadvantage in this hearing. They took over management of the building on October 1. They do not have any records from the previous property managers. They are currently in the process of inspecting all the units, trying to satisfy existing tenants, and improving the information flow to the residents.

The greatest disadvantage the landlords suffered in this hearing was the constant construction noise in the background, which at times was so loud that it was difficult to hear the parties. The tenant had called from his unit. He stated that the noise we were hearing was from renovations being made to the interior of nearby units and that the exterior work is even louder.

Analysis

The *Residential Tenancy Policy Guidelines*, available on-line at the Residential Tenancy Branch web site, provide succinct summaries of the legislation and the common law applicable to residential tenancies in British Columbia. Those guidelines will be referenced in the course of this decision.

This is a claim in contract by the tenant against the landlord. As explained in *Residential Tenancy Policy Guideline 16: Claims in Damages*:

“Where a landlord and tenant enter into a tenancy agreement, each is expected to perform his/her part of the bargain with the other party regardless of the circumstances. A tenant is expected to pay rent. A landlord is expected to

provide the premises as agreed to. If the tenant does not pay all or part of the rent, the landlord is entitled to damages. If, on the other hand, the tenant is deprived of the use of all or part of the premises through no fault of his or her own, the tenant may be entitled to damages, even where there has been no negligence on the part of the landlord. Compensation would be in the form of an abatement of rent or a monetary award for the portion of the premises or property affected.”

Section 65(1) allows an arbitrator who has found that a landlord has not complied with the Act, regulation or tenancy agreement to order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of the tenancy agreement.

As explained in *Residential Tenancy Policy Guideline 6: Right to 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. . . .In determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration 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.”

The tenant gave his oral testimony in a straightforward and undramatic fashion. I believe his testimony. In particular, I believe that he did bring maintenance issues to the attention of the previous property manager and I believe his oral description of events in the building.

After considering the following factors:

- On average, the tenant has had no or very limited quiet enjoyment (literally) of his unit for ten hours per day, twenty days per month;
- In addition to noise, the tenant has experienced interruptions in water supply, lack of hot water in the kitchen, and water leaks in his unit; and,
- The anxiety created for this tenant by the previous property managers failure to communicate effectively with the residents of this building;

I find that the value of this tenancy has been reduced by 35% or \$252.00 since January 1, 2016. I award the tenant the sum of \$3024.00 as compensation for loss of quiet enjoyment and for repairs, services or facilities agreed upon but not provided for the

period January 1, 2016 to December 31, 2016. Pursuant to section 72(2) this amount may be withheld from each rent payment due until paid in full. Alternatively, the landlord may, at its' option, pay the tenant the sum of \$3024.00 in full satisfaction of this award.

In addition, the tenant may deduct the sum of \$252.00 from each rent payment due commencing January 1, 2017 until the repairs to the exterior of his side of the building and the bottom five floors of the building have been completed and the noise level in his unit has been substantially reduced. If the parties are not able to agree on when this has occurred, either party may apply to the Residential Tenancy Branch for further direction.

I accept the landlord's statement that they will be addressing the issues related to water leaks, water damage and lack of hot water in the kitchen as soon possible so no repair order will be made at this time. If repairs are not made within a reasonable period of time, the tenant may apply to the Residential Tenancy Branch for a repair order and/or an order reducing the rent.

The tenant did not pay a fee to file this application so no further order is required.

Conclusion

A rent reduction starting January 1, 2016 has been ordered.

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: December 01, 2016

Residential Tenancy Branch