



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 415 MICHIGAN STREET
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR, MT, DRI, MNDC, RR, O, FF

Introduction

The tenants apply to cancel a ten day Notice to End Tenancy for unpaid rent, for more time to do so, to dispute a rent increase, for a monetary award for loss of amenity, health, safety and security related to construction work at their apartment building, for a rent reduction and for “other” unspecified relief.

Prior to this application the landlord had applied by direct request (file number shown on cover page of this decision) and obtained an order of possession and a monetary award for unpaid rent. The tenants applied for review of that decision and as a result, by decision dated December 19, 2016, the monetary award for unpaid rent was revoked while the order of possession was upheld. As stated at this hearing, this tenancy ended as the result of that ten day Notice and the order of possession is valid and in effect. This tenancy ended on November 10, 2016, the date stated in the Notice.

As a result, the tenants’ requests raised at hearing regarding keys, a repair order and a rent reduction into the future are no longer relevant.

All parties attended the hearing, the landlord by its representatives, 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 there been an improper rent increase and if so, what are the tenants owed? Are the tenants entitled to compensation because of the renovation work on the building that the landlord is carrying out? If so, what is a proper measure of that compensation? Are they entitled to an award resulting from a flood in the building or to recover out of pocket expenses and time expended in starting and preparing for this dispute hearing?

Background and Evidence

The rental unit is a one bedroom apartment. The tenants took occupancy in October 2014. The current landlord respondent acquired the apartment building in late 2015 or early 2016.

The tenants say the monthly rent is \$910.00 but as the result of a verbal notice, they have been paying \$933.00 since January 2016. The landlord agrees the rent is \$910.00 and does not dispute that the tenants have been paying \$933.00.

The tenant Mr. T. testifies that since January 2016 when a new management company took over the building things have gone downhill. He says since then he has been living in a “construction zone.” He says little about the actual construction work going on but it is loud and disturbing and had an immediate impact on his sleep.

He says the construction work takes place from early morning until evening. On being questioned by Mr. H. for the landlord Mr. T. says he works in his rental unit and that his work is in the nature of video and sound editing, graphic design and event coordination. He says he works from 5:00 p.m. until 2:00 to 4:00 a.m. and so is trying to sleep during the day, when the work takes place.

Mr. T. says that there have been three “stop work” orders issued regarding asbestos in the building and that it has caused him anxiety.

He says that his water has been shut many times without notice; sometimes all day long. On being questioned he could not give specific dates or times but said it occurred frequently.

Mr. T. refers to a Schedule “A” to the application; setting out the details of his dispute. It lists:

Building Security

- No on-site building manager,
- Front doors are left open,
- Tenants cannot contact property managers outside of business hours even for emergencies,
- Construction workers are living in some of the suites and using the lobby in the evenings.

Health Concerns

- Asbestos containing materials have been disturbed by the construction,
- Exposure to construction dust, including lead containing material and chemical fumes,
- Strong odours causing headaches in tenants living adjacent to units undergoing renovation,
- Construction noise 8:00 a.m. to 8:00 p.m. contrary to a municipal noise bylaw prohibiting such noise after 7:00 p.m.
- Extreme and excessive noise due to jackhammering and demolition of concrete railings on the balconies. The Schedule notes: “[e]xtremely disruptive to tenants who are home during the day, particularly shift-workers who need to sleep and individuals who work from home.”

Loss of or Reduced Amenities

- Water shut off 8:00 a.m. to 5:00 p.m. several times per month, at times without notice,
- Street parking greatly reduced due to construction and related vehicles,
- Reduced access to elevators,
- Loss of balcony use,
- Common area cleanliness decline,
- No response to enquiring emails to landlord,
- Apartment building pool opened two weeks late.

Property Management

- Rent reduction refused,
- The work and resultant intrusion expected to last 24 months.

The tenant also listed in the Schedule “upcoming issues of dispute” however, as this tenancy has ended, those anticipated problems need not be outlined or addressed in this proceeding.

On being questioned, Mr. T. acknowledged that the Schedule was not particular to his unit but was drafted by himself and another tenant or tenants of the building.

Mr. T. also testified about a flood that occurred on his floor in March 2016 and how it caused the carpet near his front door to be wet. He says the landlord's workmen place a dehumidifier or blower in his unit for a night in order to dry the carpet but that the carpet didn't dry for a week and a half. He says the dehumidifiers in to other apartments were loud all night.

Mr. T. also complains that the construction work has reduced the amenity of the apartment yard.

The tenant Ms. H. testifies the influx of workers living in the building has added to traffic and noise. She is concerned about the workers, considering some of them "sketchy."

She says that her apartment is right above the lobby and parking and receives a lot of noise related to the construction. She says huge chunks of concrete have fallen on their suite.

She is concerned about the quality of the work being done because of the asbestos related notices. She says the construction company working at the site does not even have a name.

Ms. H. says that the drilling noise is loud. She can't escape it even with ear plugs. She says that she and Mr. T. write notes to each other to communicate.

On being questioned Ms. H. states that has been working in the film industry for two years "on set." And two years at a talent agency. She's been off work since December 2016 but worked a lot in 2016. Sometimes she is home sometimes not. She estimates she is home during the day about one half the time.

The landlord gave very limited evidence in response. Mr. H. says that a leaky faucet was repaired. Ms. C.A. says, regarding repairs, all suites were inspected in November and a list of repairs given to the landlord's handyman. She says that the tenants' rent is \$910.00 but was mis-recorded by the landlord at \$925.00.

Analysis

Rent

I find that the tenants' monthly rent was \$910.00 during the year 2016. I find that they were paying \$933.00 pursuant to a verbal demand from the landlord and that the \$23.00 extra each month was an unauthorized rent increase. The tenants are entitled to recover that extra \$23.00 per month for the months January to November for a total of \$253.00.

Renovation

The central issue is whether or not the tenants have been significantly interfered with by the renovation work undertaken by the landlord.

As stated at hearing, the tenants as claimants bear the initial burden of proving that the landlord is causing an abnormal disturbance to their use of the apartment and/or the common areas.

In that regard they have submitted the decision rendered in a similar, earlier dispute by another tenant in the building who had also applied for a rent reduction due to the renovation work being carried on. As noted in that decision:

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.

As concluded in that decision, I find here that the landlord's work, spanning a period of twelve months of daily construction work (but for weekends) goes well beyond normal maintenance and repair. It is a major renovation of the apartment building.

However, the detail of the work and its effect proved by the applicant in that case cannot simply be adopted in this one. As stated at hearing, each claim must be determined on its own merits having regard to the particular circumstances of that case..

On the evidence presented in this dispute I am satisfied that significant construction work was taking place in and around this apartment building starting in January 2016. That work included jackhammer work, the removal and replacement of carpeting in various locations in the building including the tenants' apartment requiring their absence for a day. The work was noisy and the traffic in and out of the building was increased.

The work normally started on weekdays at 8:00 a.m. and lasted sometimes into the early evening.

Ms. H.'s evidence that even earplugs did not solve the noise problem was evidence uncontradicted by the landlord. She acknowledges that she worked a lot during 2016. There is no evidence that she was working from the apartment during the day or was home more than half the time during the day.

Mr. T. says he did work from home through the night and slept during the day, and that his sleep was disturbed by the renovation work. He did not indicate that it was a constant or merely occasional disturbance of his sleep.

But for these general statements, there is very little evidence upon which to determine the type or extent of the particular noise complained of; be it jackhammering, workmen working, vehicles running, etc. . . . or how it affected either tenant.

Even despite the generality of the tenants' evidence about the noise and its effect, I am satisfied that their use of the apartment has been significantly interfered with. As

well I am satisfied that on occasion the tenants were surprised to find that there was no running water in their apartment and that the lack of water was as a result of the work being carried on the by landlord.

In the circumstances I consider a fair measure of their loss to be in the form of a percentage of the use of the apartment lost because of the noise intrusion and thus a percentage of rent. I award the tenants a rebate of 25% of rent paid between January and November 2016, when the tenancy ended, and which I calculate to be \$2502.50.

Asbestos

Regarding the issue of asbestos, it is apparent that the landlord's workmen's asbestos abatement precautions did not comply with the law and work was stopped until they did. However it has not been shown that asbestos was disbursed or otherwise posed a risk to the health of the tenants. They have not proved any damages resulting from the stop work orders regarding asbestos.

Wet Carpet

It appears that the tenants have only just raised the issue of the wet carpet at this hearing. The landlord did not object to that claim at the hearing and so it will be dealt with. In order to succeed on such a claim it is necessary for the tenants to show that the flood of water that wetted their entranceway carpet was caused by the landlord's action or by its failure to take proper action. The evidence here does not show that cause. The ingress of water to the tenants' entranceway may equally have been caused by the actions of another occupant in the building. The landlord is not responsible for damage suffered by other tenants in that case. The tenants' claim in this regard must be dismissed.

Out of Pocket

The tenants' claim for their time and out of pocket expenses in bringing and preparing for this hearing must be dismissed. An arbitrator's power to make an award in the nature of fees and disbursements is limited to awarding recover of the filing fee.

Management Decline

Regarding the tenants' complaint that management of the building has gone "down hill" over the last year, they do not claim that they have suffered any tangible loss or damage as a result. Had this tenancy continued the matter may have been relevant to consideration of a compliance order, but since this tenancy has ended, there is no basis for an award of that kind. That portion of the claim is dismissed.

In result the tenants are entitled to a monetary award of \$2755.50. The filing fee for their application was waived.

Conclusion

The tenants will have a monetary award against the landlord in the amount of \$2755.50. It should be noted that if the landlord is proceeding with its claim for unpaid rent, as indicted by the review decision, the parties are entitled to set off the awards against each other.

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: January 22, 2017

Residential Tenancy Branch