



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 415 435 Michigan apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, FF

Introduction

This is an application brought by the tenant(s) requesting a 50% rent reduction, and recovery of their \$100.00 filing fee.

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Preliminary Matter

The respondent/landlords stated that the actual legal name for the landlord is different than the name listed as the respondent on the application and therefore they requested that the name be changed to the legal name. The tenants agreed to the change and therefore that change is reflected in this decision.

Issue(s) to be Decided

The issue is whether or not the applicants have established the right to a 50% rent reduction for loss of use and enjoyment of the rental unit/property.

Background and Evidence

The applicants testified the construction began on the rental property in December of 2015 and since that time they have encountered numerous disruptions however, although they have tolerated the disruptions up until October of 2016 they are now finding the disruptions to be so extensive that they believe a 50% reduction in rent should be ordered for loss of use and enjoyment.

The applicants further testified that since October the disruptions have caused an extensive loss of use and enjoyment as follows:

- They have lost the use of their balcony entirely.
- Their windows have been covered and therefore they have lost their view, which was one of the main reasons for moving to this property.
- They have no access to fresh air or daily sunlight.
- Their green space has been severely restricted.
- Both the parking and bicycle parking have been severely restricted.
- There is a loss of quiet enjoyment from the constant noise.
- Elevator use has been limited by ongoing use by construction workers.
- The noise is so severe it interferes with their child's naps and they are unable to have guests over for play dates, as it's virtually impossible to talk over the loud noise of the construction.

The applicants further testified that they have provided video evidence clearly shows the type of noise they have to tolerate throughout the day, and in fact it so bad that they find they have to get out of the apartment to get away from the noise.

The applicants further testified that the dust from the construction is also excessive and, in fact, at this time management has asked them to move out of the rental property for two week period until they can ensure that there is no health risk from the dust.

The applicants further testified that although they understand that this work is necessary, they believe that a 50% reduction in rent is justified, due to their loss of use and enjoyment of the rental property.

The lawyer representing the landlord stated that renovations were required at this property because it is an older property that was nearing the end of its useful life and therefore to comply with section 32 of the Residential Tenancy Act, which states that the landlords have a duty to upkeep and repair the property, the landlords have engaged in extensive repairs to this rental property.

The lawyer representing the landlord further stated that after an assessment was done of the property it was found that repairs were required as soon as possible, however she would argue that those repairs have not substantially affected the quiet enjoyment of the rental property, with all ongoing work taking place during normal working hours.

The landlord testified that there is a stop work order on one of the buildings however that did not affect this building, but they, the landlords, have a self-imposed stop work order for two weeks, and are housing all the tenants in a hotel to ensure that it this building does not pose any health risk to the tenants.

The lawyer representing the landlord questioned the tenants as to whether there were stairs available for them to use when the elevator is out of service to which the tenants replied that yes there are, however it's very difficult as they are on the 14th floor and have a small child.

When questioned by the lawyer representing the landlords as to why they couldn't have visitors come in the evening outside of working hours, the tenants stated that most of their visits are for play dates with friends and their children, and those visits are normally done during the day.

In summation, the tenants believe that they have a 50% loss of use and enjoyment of the rental unit and should receive a 50% rent reduction until the construction is concluded and the landlords believe that there is not a significant loss of use of enjoyment and since the landlords are required to do this work pursuant to section 32 of the Residential Tenancy Act, they should not be penalized with the loss of rent.

Analysis

Section 28 of the Residential Tenancy Act speaks to the tenants right to quiet enjoyment, and provides as follows:

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

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Further section 7 of the Residential Tenancy Act states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

It is my finding that the tenants have shown that they have been unreasonably disturbed by the amount of noise caused by the ongoing construction at the rental property and have also shown that their use of the common areas has been significantly interfered with.

Further, it is also my finding that the tenants have been quite reasonable, having put up with the construction for a long period of time prior to filing for any reduction in rent

It is my decision therefore that the tenants do have a claim for reduction in rent for a significant loss of use and enjoyment, and I find the 50% amount requested to be reasonable.

The landlord has argued that they were required to do these repairs pursuant to section 32 of the Residential Tenancy Act, and therefore they do not believe that a rent reduction should be ordered, however just because the repairs were required under section 32 of the Residential Tenancy Act does not mean that the tenants should be required to pay the full rent if they have a significant loss of use of enjoyment resulting from those required repairs. The tenants are paying rent for the full use and enjoyment of the rental property and if they are not receiving the full use and enjoyment of that rental property they should not be required to pay the full rent.

It is also my decision that the rent reduction will continue even during the period of time that the tenants are being housed in a hotel at the landlord's expense, because this too is an inconvenience to the tenants as they do not have normal access to their belongings.

I also allow the tenants request for recovery of their \$100.00 filing fee.

Conclusion

I hereby Order that the tenants rent be reduced by 50%, retroactive to October 1, 2016, and that the rent reduction continues until the renovations on this rental property are substantially completed, such that there is no longer any significant loss of use and enjoyment of the rental property.

I further Order that the tenants may deduct any overpayment of the rent that resulted from this retroactive order, plus recovery of their \$100.00 filing fee, from future rent payable to the landlords.

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 30, 2017

Residential Tenancy Branch