



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 MNDC RR FF O

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on August 29, 2016, and updated on or about August 31, 2016 (the "Application"). The hearing of this matter commenced on December 13, 2016, but was adjourned to give the Landlord an opportunity to receive and consider the digital evidence relied upon by the Tenant.

The Tenant applied for the following relief pursuant to the Residential Tenancy Act (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order allowing the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided;
- an order granting recovery of the filing fee; and
- other unspecified relief.

The Tenant attended the hearing on his own behalf. The Landlord was represented at the hearing by R.K. and G.H. All parties giving testimony provided a solemn affirmation.

The Tenant testified the Landlord was served with his Application package, including the Notice of a Dispute Resolution Hearing and documentary evidence, by registered mail on August 13, 2016. The Landlord confirmed receipt of the Tenant's Application package.

In addition, the Tenant testified that the digital evidence upon which he intended to rely was served on the Landlord by registered mail on December 22, 2016. G.H. confirmed receipt of the Tenant's digital evidence soon thereafter, and that the Landlord had sufficient opportunity to review it.

The Landlord's documentary evidence was served on the Tenant, in person, by the building manager on December 2, 2016. The Tenant acknowledged receipt on that date.

No further issues were raised with respect to service of the documents or evidence referenced above. Both parties were represented at the hearing and were prepared to proceed. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, G.H. confirmed the correct legal name of the Landlord. The Tenant did not object to the Application to being amended to reflect the correct legal entity. Accordingly, pursuant to section 64 of the *Act*, and with the agreement of the parties, I amend the Tenant's Application to reflect the correct legal name of the Landlord.

Issues to be Decided

1. Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
2. Is the Tenant entitled to an order allowing them to reduce rent for repairs, services or facilities agreed upon but not provided?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

The parties agreed with respect to the terms of the tenancy, which commenced on or about June 1, 2005. Currently, the Tenant pays rent of \$1,000.00 per month on the first day of each month.

The Tenant claims a significant renovation and repair project involving the interior and exterior of the rental property has interfered with his right to quiet enjoyment. Specifically, he indicated the project has produced noise, vibration and dust, and stated this has been extremely debilitating. The Tenant is retired and spends a lot of time in his rental unit. The Tenant has requested a 50% rent reduction for 24 months, which was one estimate of the anticipated duration of the project.

The Tenant testified the project began on or about June 29, 2016. At that time, scaffolding was erected and jackhammering began on the concrete balconies. The Tenant confirmed during the hearing that noise from jackhammering begins each weekday morning between 7:30 a.m. and 8:00 a.m. With the exception of recent interruptions, he testified the jackhammering is ongoing.

Further, the Tenant testified that garbage has been left in the hallways by workers, and that the interior of the building is not maintained as it was before the project began. Dust can be found throughout the rental property. The Tenants also testified he is able to hear renovation work occurring in other rental units, even when that work is taking place several floors above or below his rental unit.

The Tenant also stated that the project has resulted in decreased services and has raised health and safety concerns. He stated that a recent application of a coating on the balcony resulted in fumes that nauseated him. He also alleged there may be asbestos present in the building. The Tenant confirmed the exterior and interior renovation work has been disruptive and has decreased his quality of life. The Tenant testified to his belief that some recent work stoppages will add to the duration of the project.

The Tenant submitted digital evidence in support of his claim. The digital evidence provided included:

- photographs of dust in a window sill;
- photographs of notices from the Landlord regarding the timing of various aspects of the renovation project;
- a video clip showing water damage in the laundry area;
- video clips taken at various locations and in which jackhammering noise can be heard;
- photographs depicting the exterior of the building; and
- video clips of workers in and around the building, and associated construction noise.

On behalf of the Landlord, R.K. acknowledged the renovation project is ongoing and includes exterior and interior work. He testified that the Landlord considers the rental property to be near the end of its useful life and wishes to make improvements. The main components of the project include remediation of balconies and replacement of railings to improve safety; painting of the exterior and interior of the building; replacing

single pane windows with double pane windows; and making improvements to laundry and storage facilities, and common areas. A Baseline Condition Property Assessment report, dated October 13, 2015, was submitted into evidence by the Landlord. It confirms an immediate need to address balcony deficiencies that included concrete deterioration and corroded hardware.

With respect to the Tenant's testimony concerning work stoppages, R.K. acknowledged there have been stoppages but that a new head contractor has been brought on to oversee the sub-contractors currently working throughout the rental property. R.K. testified to his belief that jackhammering, which was scheduled to be complete at the end of January 2017, has been delayed by only 2-3 weeks and will likely be complete at some time in February 2017.

At the conclusion of the hearing, G.H., made closing submissions on behalf of the Landlord. He acknowledged some disruption to the Tenant caused by the renovation work but disagreed as to the amount of compensation to which the Tenant may be entitled.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 28 of the *Act*, which protects a tenant's right to quiet enjoyment, states:

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.*

[Reproduced as written.]

Policy Guideline 6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

[Reproduced as written.]

At the same time, a landlord also has an obligation to repair and maintain rental property. Section 32(1) of the *Act* states:

A landlord must provide and maintain residential property in a state of decoration and repair that

- (a) complies with the health, safety and housing standards required by law, and*
- (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

[Reproduced as written.]

The Tenant testified that the renovation and repair noise has caused him to experience a loss of quiet enjoyment. Ongoing jackhammering and other noise from repairs and renovations, garbage in the hallways and safety concerns, were cited as examples by the Tenant. The Landlord acknowledged the Tenant has experience some disruption, particularly due to jackhammering noise. However, I am not satisfied the Tenant is entitled to a 50% rent reduction as claimed. The Tenant should be aware that maintenance to the building is required and will be of benefit to all occupants once completed. However, I also find that since the Tenant spends more time in his rental unit than he would if he was not retired, I find it is appropriate to award the Tenant \$2,000.00, which has been calculated based on a 25% rent reduction for the eight months during which jackhammering is expected to take place. This amount includes any and all disruptions caused by the repair and renovation project to until and including February 28, 2017.

The project is ongoing and the Landlord anticipates the conditions will improve for all tenants once jackhammering ceases. In light of the difficulty in determining any entitlement to future compensation, I grant the Tenant leave to apply for further compensation for loss of quiet enjoyment, if any, as of March 1, 2017.

Having been successful, I find the Tenant is entitled to recover the filing fee paid to make the Application in the amount of \$100.00.

Pursuant to section 67 of the *Act*, I find the Tenant is entitled to a monetary award of \$2,100.00, which consists of \$2,000.00 for loss of quiet enjoyment and \$100.00 as recovery of the filing fee. I order that the Tenant may deduct this amount from future rent payments.

Conclusion

The Tenant is entitled to a monetary award of \$2,100.00, and I order that the Tenant may deduct this amount from future rent payments.

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 20, 2017

Residential Tenancy Branch