



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding Starlight Investments
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a rent reduction for repairs, services and facilities agreed upon but not provided and damages for loss of quiet enjoyment. Both parties appeared and gave affirmed evidence. No issues regarding the exchange of evidence were identified.

The hearing started on January 17, 2017. The parties were not able to complete their testimony in the time allotted and it was continued on February 3, 2017, a date and time convenient for all.

Issue(s) to be Decided

Are the tenants entitled to a monetary order and, if so, in what amount?

Background and Evidence

The rental unit is one bedroom, one bathroom apartment located on the fifth floor of high building. There are two towers located on this property.

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; exterior modernization; corridor, lobby and entrance refurbishment; and building system upgrades. In addition, the interiors of all units are being renovated as they become available.

This tenancy started August 1, 2016 as a one year fixed term tenancy. The monthly rent of \$1385.00 is due on the first day of the month. The tenants paid a security deposit of \$692.50 and a pet damage deposit of \$692.50.

The current property managers took over October 1, 2016. They were only able to provide limited evidence about events prior to that date. There was no evidence tendered from the owners, other than the Baseline Property Condition Assessment Report and some initial notices to the tenant..

The tenant testified that they looked at the unit in July with a property manager who is no longer employed at this location. The viewing was arranged for after 5:00 pm, at the property manager's request. The unit is one of the renovated units and the tenant said they thought the interior was beautiful. The unit has a balcony and a nice view.

When the tenants looked at the unit there was construction activity and materials on the site and the hallway was dirty and contained construction debris. The tenant could not recall whether the balcony was under repair at that time or not. The tenant testified that the property manager told them that the hallway was be cleaned before they moved in; and the balcony would be finished in three weeks, as would the construction.

When the tenants moved in the hallway was in the same condition as when they looked at the unit. The tenant said the hallway was not cleaned until two days before the hearing on January 17th. The new property managers contested that statement saying that after they took over cleaning was a priority and the entire building was cleaned. The tenant responded that the entry and lobby area was cleaned but their hallway was not.

When the tenants moved in there were a number of deficiencies:

- The kitchen taps were not sealed and water leaks into the cabinet below. The tenants have placed a pail under the sink to catch the water.
- The bathtub is not sealed. There is a one inch gap between the tub and the floor covering.
- The electrical outlet in the bathroom does not work.

The tenants notified the landlord about these deficiencies but there was no response and nothing has been repaired.

In addition, the windows and the sliding glass door to the balcony were sealed shut and have remained so. About a month into the tenancy the sliding glass door was shattered as a result of the construction activity. The only repair was to cover the cracks with red tape. The tenant testified that the door was not repaired until December. It still cannot be opened.

The balcony has not been finished and they have never been able to use it.

One of the most troublesome deficiencies is that the toilet does not flush properly and has not been properly sealed. The tenants use a plunger to get it moving but often it overflows and they have to clean up a mess. On other occasions, after it has been used, the toilet fills up to the top but does not drain. The tenants are not able to open the windows or balcony door so the unit smells bad. The tenants reported this problem to the previous and current property managers.

At the hearing on January 17 the tenant reported that a day or two previous the toilet had overflowed and the overflow had gone into the unit below causing damage to that unit. She testified that the building manager had looked at the situation and said they might not be able to get a plumber because of the stop work order. The Vice President of the property management firm acknowledged that this was a real issue and testified that it was being dealt with as an emergency situation.

At the hearing on February 3rd the tenant reported that they had not been able to use the toilet at all for the past two days. The building manager had been to their unit but was unable to get the toilet working. He told the tenant that he had no authorization to make any repairs.

When the tenants moved into the unit, they discovered that there was jackhammering outside from 8:00 to 4:00 pm, Monday to Friday, until December. The noise shook the apartment and was so disruptive that the tenants' cat eventually died from the stress.

The female tenant works as an accountant. Her usual hours of work are 8:00 am to 4:30 pm, Monday to Friday. She does have flex days. The male tenant works part-time; both day and evening shifts. As a result, he is often home during the day. The tenant said her partner wears headphones during the day or takes their dog and sits in their vehicle.

In addition to the jackhammering there is general construction noise in the evenings and on weekends.

One of the landlord's witnesses was an individual who had worked for the previous property management company and now works for the current property management company. He testified that he has had no involvement with these tenants. He said that the property manager that showed the tenants the unit did all of the leasing for both buildings. He testified that all property management staff was given general information on the construction schedule and they all knew that this was going to be long project. He could not say what the leasing agent would have told these tenants. The witness also testified about the level of construction activity that would have been going on at the site in July when the tenants looked at this unit.

On cross-examination the tenant said they could live with the general construction noise; it was the jackhammering that was the issue.

A stop work order was imposed on the project by WorkSafe BC on December 14, 2016 because of concerns regarding the proper testing and disposal of building materials that were old enough to have possibly contained asbestos. The stop work orders were posted on the front door of the building.

The result of the stop work order was that no employee covered by WorkSafe BC could enter the building. This included constructions workers, property management staff, tradesmen, and mail delivery people. The landlord could not make any repairs that were required in units or the building. Property management staff, which usually set up shop in the lobby with an Interac machine to collect rent, could not do so. Tenants had to go to the property managers to pay the rent. The tenant described the difficulty this caused them. Canada Post could not deliver mail to the building so the tenants had to go to the main post office to collect their mail.

When the stop work order was imposed all interior work in the building stopped. The parties gave differing testimony regarding the level of outdoor work since the stop work order was imposed. The tenant said that outdoor work went on from 8:00 am to 3:00 pm on Saturdays and Sundays. The property manager acknowledged that there had been some outdoor work but nothing over Christmas and nothing for the last three weeks of January.

The stop work order was lifted with regard to common areas on January 6, 2017.

The property manager testified that the building owners have decided that no interior work will be done until the exterior work has been completed. A re-organization of the remaining work is being done. One of WorkSafe BC's requirements is that a single prime contractor for the whole project be named by the owner. The property manager was not able to say when this re-organization will be completed or when work will start again.

The property manager also testified that a complete review of the maintenance needs all 500 plus units in this complex was done at the end of 2016. That summary was provided to the owner. While the owner is putting together a plan all repairs are on hold. The property manager testified that they are hoping to get items done as quickly as possible.

The tenant testified that many of the construction workers are living in the building and they use the lobby as their "hang-out spot". Further, the doors are constantly left open and she sees people that she knows do not live in the building using the pool and in the building. As a result of these activities she feels unsafe. Her only negative experience was one day when she was home a construction worker walked into their unlocked unit. He left immediately when she identified that she was there. She is now more careful about locking her unit.

The tenant testified that the water has been shut off on eight occasions since the start of their tenancy and that there was only advance notice of the shutoffs on two occasions.

In addition to the inconvenience in paying rent caused by the stop work order the tenant testified about other difficulties they had had with payment of rent to the previous property manager, who managed to lose two rent payments. Eventually the situation was resolved but not before considerable time had been spent on it.

Finally, the tenant testified that during the day all but one elevator is reserved for construction related activities. This results in considerable congestion in the mornings when residents are trying to get to work.

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 tenants 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.

There was no evidence from the landlord to contradict the tenant's account of events prior to October 1, 2016. The one witness for the landlord who talked about the construction schedule could not say what these tenants were actually told by his former colleague. Accordingly, I accept the tenant's testimony with regard to events prior to October 1.

I find that the tenants were told that the hallway would be clean when they moved in and that they would be able to use the balcony within a month of the start of the tenancy. I find that the tenants expected that there would be general construction noise at the site and were prepared to live with that. I also find that the leasing agent was careful not to give the tenants any indication that there would be daily continuous jackhammering for months.

These tenants are paying a premium in this market for a brand new suite, with a balcony, in a secure building.

I find that the value of this tenancy has been significantly reduced by:

- Their inability to use the balcony or to open the windows since the start of this tenancy.
- The leaking kitchen sink and bathtub, the broken patio doors, and the non-functioning bathroom outlet.
- The very loud jackhammering five days a week for months.
- The ongoing construction noise in the evenings and on the weekends.
- The lack of cleanliness in the building.
- The lack of property management services prior to October 1, 2016.
- The interruption in water services.
- The interruption in postal delivery services.
- The lack of information regarding the stop work order imposed by WorkSafe BC and the resulting anxiety experienced by them.
- The disruption and unease caused by the workers using the front lobby as a social club.
- The reduction in the sense of security caused by strangers, who might be workmen but might not, wandering in and out of the building and using the pool. It is true that these tenants have not had a bad experience personally but they pay extra to live in a secure building.

I find that that overall impact of all these events has reduced the value of this tenancy and I award the rent reduction they requested, 50%. Accordingly I award the tenants the sum of **\$3562.50**. This represents one half of the rent paid for the period August 1, 2016 to December 31, 2016, and the filing fee paid by the tenants for this application..

I am not making any award for these factors for the period January 1, 2017, onward. The evidence is that the situation at this building going forward should be quite different then the situation that has existed for the past several months. However, in the future, the tenants may apply for another rent reduction based upon the events of that time.

Pursuant to section 72(2), this award may be satisfied by the tenants withholding rent as it becomes due until this award is paid in full. Alternatively, the landlord may, at its option, pay the tenants the amount awarded in full satisfaction.

A monetary order in this amount is granted to the tenants. In the event that the tenants move out of their unit before their award has been satisfied in full they may file the monetary order with the Small Claims Court and enforce the balance of the order as an order of that Court.

I am making a separate order with regard to the non-functioning toilet. This problem was first reported in August; the stop work order was lifted on January 6, 2017; the tenant testified about the problem on January 17 and the Vice President of the property management firm testified that the issue was being dealt with as an emergency; the building manager looked at it on or about February 1 and said he had no authorization to make the repair; and by February 3 the tenants were not able to use the toilet at all. I award the tenants a rent reduction of **100%** for the period January 1, 2017 until the toilet has been properly repaired. This reduction may be calculated at a daily rate of \$46.17. Pursuant to section 72(2), this award may be satisfied by the tenants withholding rent as it becomes due until this award is paid in full. If the parties are not able to agree on when the toilet is fully functional and the rent reduction may cease, either party may apply to the Residential Tenancy Branch for an appropriate order.

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: February 14, 2017

Residential Tenancy Branch