



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes RR

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking a rent reduction.

The hearing was conducted via teleconference and was attended by the tenant and two agents for the landlord.

At the time of the hearing the parties confirmed that due to the discovery of asbestos in the building during the landlord's renovations all affected residents have been moved into a hotel at the landlord's expense until it is safe for tenants to return to the residential property and their respective rental units. It is also my understanding that the tenant is not required to pay rent during this time.

During the hearing the landlord referred to evidence the tenant had served them but I noted that I did not have the evidence in front of me. As the landlord had received the evidence, I find no prejudice to the landlord to allow the tenant to submit this evidence after the hearing. I order the tenant to submit the evidence and it was received on the same day of the hearing.

I also note the landlord's agent identified that the second named respondent was incorrectly named. I have amended the tenant's Application to correct the respondent name.

Issue(s) to be Decided

The issues to be decided are whether the tenants are entitled to a rent reduction for the loss of quiet enjoyment, pursuant to Section 32 of the *Act*.

Background and Evidence

The parties agreed the tenancy began on May 1, 2014 as a month to month tenancy for a current monthly rent of \$1,028.42 due on the 1st of each month with a security deposit of \$482.50 paid.

The parties agree the landlord has been completing major renovations to the residential property for long period of time. The landlord submitted that renovation work began on the residential property in October 2015. This work has included renovations to individual suites and/or balconies and common areas of the property.

The landlord submitted a copy of a letter sent to tenants on October 30, 2015 advising them of a change in property management and of upcoming work on the property. The letter states the landlord intends to complete maintenance, repairs and capital work to the property including:

“Corridor, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, windows & doors, unit renovations, energy efficient systems and mechanical equipment”

The work is intended to ensure the long term physical and structural integrity of the building(s) and improve the quality and safety of your physical surroundings. The work is expected to take 36 months to complete. As a result, of the proposed construction activity at the property there may be noise, vibration, dust and inconvenience to access and egress at the property; however, we will take steps to minimize inconvenience and will provide status updates as work progresses.” [reproduced as written]

The letter also offers tenants the opportunity to contact the “Site Team” if they require any special accommodation.

The tenant submits that since June 2016 the construction work has caused ongoing disturbances that have interfered with his right to quiet enjoyment. He submits, in his Application, that the work is done every day. He wrote that the work begins at 7:00 a.m. and continues until 7:00 p.m. Monday to Saturday and that on Sundays contractors are “making noise within suites.”

The landlord submits work is completed in accordance with local bylaws. While neither party provided copy of any local bylaws the landlord submitted that outside work is

allowed Monday to Saturday between the hours of 7:00 a.m. and 7:00 p.m. and interior work is allowed outside of those hours.

The tenant submitted that the disturbances are relentless and intense. He submitted that he is in a corner suite with only half of his windows sealed but has suffered a loss of airflow and light.

The tenant deleted that he sometimes works from home every other week. Usually he will work between the hours of 6:00 a.m. and 6:00 p.m. on Monday to Friday and sometimes on Saturdays. The tenant submits that disturbances impact his ability to work from home.

The tenant seeks a rent reduction in the amount of 50%. He stated that he determined this amount because another tenant had been awarded this amount through an order from the Residential Tenancy Branch. The landlord states that they have been willing to consider any request for compensation and that they have approved the only one that had been requested but that the tenant declined. The landlord did not provide any details of the compensation they had approved or confirmation that they had been ordered to reduce the rent in any other tenancies by an Arbitrator.

Analysis

Section 32 of the *Act* requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Neither party provided any evidence or a position that the work throughout the residential property was unnecessary. As such, I make no findings on the matter of the necessity of the work.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable

repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long term condition of the building.

I find there is no evidence before me that the landlord failed to take all reasonable steps to ensure the project would minimize the impact to tenants. I also acknowledge that the landlord understood that the work and its schedule was intensive and required intrusion into individual rental units.

Residential Tenancy Policy Guideline 6 stipulates that “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 the case before me, I find tenant has provided sufficient evidence to establish that his right to quiet enjoyment has been violated. However, the tenant has provided no reasonable rationale for how he determined the amount of rent reduction he is seeking.

Policy Guideline 6 states: “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”.

As such, I accept the landlord’s submissions that the project work was completed 7 days per week from between 7:00 a.m. and 7:00 p.m. with the loud outside work being completed Monday to Saturday and only interior work completed on Sundays.

While the tenant submits that he his ability to work from home was impacted greatly, I note that the agreement between the parties is for a residential tenancy only and the landlord is not obligated to provide quiet enjoyment for the purposes of the tenant working from home.

As such, I find the tenant, based on his submissions that he worked between the hours of 6:00 a.m. to 6:00 p.m. Monday to Friday and occasionally on Saturdays, was or could have been working at an outside location during most of the times the work was being completed. As a result, I find the estimate of the value of the tenant’s loss of quiet enjoyment of 50% to be excessive.

I find that a reasonable decrease in the value of the rental unit due to the loss of quiet enjoyment during the renovation period beginning June 2016 and ongoing to substantial completion, excluding any periods that the tenant is not required to pay any rent, is 25%.

Conclusion

I order the tenant is entitled a rent reduction of 25% effective June 1, 2016. I order the tenant may deduct all overpayments of rent incurred based on this retroactive order from future rent payments until the total amount of reduction for the period June 1, 2016 to present is recover.

For clarity, this order means that effective with the next payment of rent the tenant is allowed to reduce the rent by 25% for that month plus all overpayment amounts for the retroactive reductions.

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: March 08, 2017

Residential Tenancy Branch