



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devon Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, FF

Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that on January 19, 2017 the Application for Dispute Resolution and the Notice of Hearing were personally delivered to the Landlord's business office. Legal Counsel for the Landlord acknowledged receipt of these documents.

On February 06, 2017 the Tenant submitted 6 pages of evidence and a USB stick to the Residential Tenancy Branch. The Tenant stated that this evidence was personally delivered to the Landlord's business office on February 06, 2017. Legal Counsel for the Landlord acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

On February 16, 2017 the Tenant submitted 6 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was personally delivered to the Landlord's business office on February 06, 2017. Legal Counsel for the Landlord stated that this evidence was received on February 16, 2017 and it was accepted as evidence for these proceedings.

On February 17, 2017 the Landlord submitted 10 pages of evidence to the Residential Tenancy Branch. Legal Counsel for the Landlord stated that this evidence was personally served to the Tenant on February 17, 2017. The Tenant acknowledged receipt of the evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided:

Is the Tenant entitled to compensation for loss of quiet enjoyment?

Background and Evidence:

The Landlord and the Tenant agree that the tenancy began on March 01, 2014 and the current monthly rent is \$936.39.

The Tenant is seeking compensation for the loss of the quiet enjoyment of her rental unit as a result of construction.

The Tenant stated that renovations to the residential complex began on December 03, 2015. The Agent for the Landlord stated that construction began prior to his company the building and he believes the renovations began in January of 2016.

The parties agree that the initial stages of renovations included renovating common areas and individual rental units. The Agent for the Landlord stated that renovations included new carpet, paint, and replacing kitchen cabinets when rental units are vacated.

The parties agree that in June of 2016 the Landlord began upgrading the balconies, which involved jack hammering the cement structures and replacing railings, and painting the exterior.

The Tenant stated that the construction was periodically halted, although she does not know the dates or the duration of those stoppages. The Agent for the Landlord stated that construction was halted on December 14, 2016 and is waiting for approval to proceed with construction. He anticipates construction will continue for two to three months after construction starts again.

The Tenant stated that she has been regularly disturbed by the construction noise, which has given her anxiety attacks. She stated that the construction noise included:

- jack hammering, which she estimated occurred two or three times per week while they were working on the balconies;
- noise from sanding and hammering while they were working on the balconies; and
- general noise from workers banging and talking.

The Tenant stated that the noise was so bad she sometime wore head phones while she was at home and eventually decided to move out of the rental unit in November of 2016, December of 2016, and January of 2017. The Tenant stated that she moved, in part, because she became ill and, in part, because she is highly sensitive to noise.

The Tenant stated that the construction noise from the balconies were particularly disturbing for her as her rental unit is in the middle of the building and she hears the noise from all balconies. She knows that the rental units above and below her were renovated but she does not know the dates of those renovations as she was not living in her unit when these renovations were completed.

The Tenant stated that she had to dust her rental unit on a daily basis as a result of the dust ever since renovations to the balconies began.

The Agent for the Landlord does not dispute that there was significant construction noise when the balconies were being upgraded, which typically began at 8:00 a.m. or 09:00 a.m. and ended at 3:30 p.m. He noted that the construction site has been subject to bylaw inspections and the Landlord has not been cautioned regarding noise bylaw infractions.

The Landlord and the Tenant agree that the Tenant has been unable to use her balcony since August of 2016.

The Tenant stated that the construction project was stopped by Worksafe BC as a result of asbestos contamination, which has caused her anxiety. The Agent for the Landlord stated that a subsequent investigation discovered no risk to workers or occupants of the residential complex.

At the conclusion of the hearing both parties indicated they did not have additional evidence to present.

Analysis:

Section 28 of the *Residential Tenancy Act (Act)* stipulates 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.

Residential Tenancy Branch Policy Guideline #6, with which I concur, reads, in part:

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.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

I find that landlords have an obligation to maintain their rental property and the right to upgrade the property. On the basis of the undisputed I find that the Landlord has renovated the interior of the building, which included renovating common areas and rental units as they became vacant. I find that the interior renovations lasted for approximately one year and were temporarily halted on December 16, 2016. I find that the renovations to the common areas included painting and installing new flooring.

Although I recognize that these types of renovations are disruptive, I do not find that they are particularly loud. I find that these types of upgrades constitute a temporary discomfort or inconvenience which does not constitute a basis for a breach of the quiet enjoyment of the rental unit. I therefore find that the Tenant is not entitled to any compensation for any disturbances she experienced as a result of these cosmetic renovations. This decision is reached, in large part, because the tenants who experience the temporary inconvenience of the renovations subsequently benefit from the renovations.

I find that the noise related to replacing kitchen cabinets, which occurred in vacant suites, was likely more disturbing than the noise in the common areas. On the basis of the Tenant's testimony that she was not living in the rental unit while the suites near her were renovated, I cannot conclude that she was unduly disturbed by those renovations. I therefore find that she is not entitled to any compensation arising from construction noises in the suites below and above the rental unit.

On the basis of the undisputed evidence I find that renovations to the exterior of the building began in June of 2016 and continued until December 14, 2016. I find that the jack hammering and sanding that occurred during this period did breach the Tenant's right to the quiet enjoyment of the rental unit, given the volume that is typically associated to work of that nature and given the dust that type of work creates. I therefore find that the Tenant is entitled to compensation of \$150.00 per month for these

disruptions for the period between June 01, 2016 and December 14, 2016, which is \$975.00.

I note that I have not awarded compensation for any period after December 14, 2016 as there has been no work on the balconies since that time and it is entirely possible that this tenancy may end prior to construction resuming. The Tenant retains the right to file another Application for Dispute Resolution if the Landlord does not voluntarily compensate the Tenant at a rate of \$150.00 per month once work on the balcony resumes.

I note that the award of \$150.00 per month is not based on the Tenant's proclaimed sensitivity to noise; her anxiety; or her decision to temporarily relocate. Rather, it is based on my calculation on how the noise would reduce the value of the tenancy for an average occupant. In the event construction noise was particularly disruptive for the Tenant, I find that she could have mitigated the impact of the construction, pursuant to section 7(2) of the *Act*, by ending her tenancy.

On the basis of the undisputed evidence I find that the Tenant has been unable to use her balcony since August of 2016. I find that the inability to use her balcony has reduced the value of her tenancy by \$50.00 per month. I therefore award her compensation of \$400.00 for being unable to use her balcony for the period between August 01, 2016 and March 31, 2017. I further authorize the Tenant to reduce her monthly rent payment by \$50.00, commencing April 01, 2017, and continuing until such time as she has the ability to use her balcony again.

As there is no evidence to establish that the Tenant was exposed to asbestos or any other health hazard as a result of the construction, I cannot conclude that the Tenant is entitled to compensation on the basis of an asbestos contamination.

Rule 7.4 of the Residential Tenancy Branch Rules of Procedure stipulates that evidence must be presented by the party who submitted it. It is insufficient to raise issues in a written submission without raising those matters at the hearing and providing the other party with an opportunity to respond to those issues. The compensation awarded to the Tenant is, therefore, based solely on the evidence presented at the hearing. I have not considered any of the allegations made in the Tenant's written submissions that were not raised at the hearing, as the Landlord did not have an opportunity to respond to those allegations.

I find that the Tenant's Application for Dispute Resolution has merit and that the Tenant is entitled to recover the fee paid to file this Application.

Conclusion:

The Tenant has established a monetary claim of \$1,475.00, which includes \$1,375.00

for the loss of quiet enjoyment of the rental unit and \$100.00 as compensation for the cost of filing this Application for Dispute Resolution, and I am issuing a monetary Order in that amount. In the event that the Landlord does not voluntarily comply with this Order, it may be served on the Landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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 07, 2017

Residential Tenancy Branch

