Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Starlight Investments and Devon Properties Ltd. And Larlyn Property Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing an additional rent increase and seeking a monetary order for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company attended the hearing, and the landlord was also represented by legal counsel. The tenant and the landlord's agent each gave affirmed testimony, and the parties were given the opportunity to question each other and make submissions.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the tenant established that rent has been increased contrary to the *Residential Tenancy Act* and regulations?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for loss of quiet enjoyment of the rental unit?

Background and Evidence

The tenant testified that this month-to-month tenancy began around January about 2 years ago, and the tenant still resides in the rental unit. Rent in the amount of $1,195.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $597.50 which is still held in trust by the landlord, and no pet

damage deposit was collected. The rental unit is an apartment in a complex with about 13 floors. A copy of the tenancy agreement has not been provided.

The tenant further testified that he was approached in the hall by a property manager saying that the property manager had received notification that the tenant had paid an incorrect amount of rent; a discrepancy existed about what the landlords' head office said and what the tenant was paying. The tenant has paid by Interac at the landlords' office since the building was taken over by one of the named landlord companies. The property manager looked into it and told the tenant that arrears may have accumulated. The discrepancy was $381.15. The rent had increased by $34.65 per month but the tenant didn't receive any notice of it until just a few days before filing the Application for Dispute Resolution, and didn't receive any previous notice of rent increase. Rent has been paid at $1,195.00 per month in person at the landlords' office and it was never raised.

New owners have taken over the apartment complex, and notice was given to the tenants, however since then, there has been no regular cleaning in the common areas. The tenant further testified that the claim includes monetary compensation for loss of quiet enjoyment for extreme noise, banging on walls, failing to clean common areas, and dust entering into the tenant's apartment. The tenant also asked for a sill on his door due to dust.

The pool was open late but the water was shut off on an extremely erratic basis. There tended to be emergency shut-offs more than a couple times per month and no communication to tenants about it. Further, during renovations the tenant hasn't been able to use elevators because construction workers were moving and removing materials using the elevators, requiring tenants to use stairs. It got worse in the spring, with jack-hammering and balconies taken apart. The tenant's balcony was sealed off; and someone arrived to strip stuff on the inside of the tenant's rental unit to prepare it for replacement, but that still hasn't happened. Most significant to the unbearable level of noise is jack-hammering in the entire building which has gone on for months and is still not completed. The tenant works and goes to school, and despite earplugs has not been able to sleep or study at home. The tenant had a guest visit and they couldn't even talk to each other. The noise was actually hurting the tenant's ears resulting in the tenant not wanting to be at home. Jackhammering started late May or early June and other construction was done during months before that and throughout the summer until WorkSafeBC put a stop work order on the building due to concerns of asbestos.

There are still electric wires hanging down which the tenant has to pass to access the elevator. Doors are always open and construction workers everywhere using facilities, resulting in no quiet enjoyment or privacy or security. The tenant has not been able to

sleep when he needed to or work when he needed to. The tenant's life-style is oriented around working from home and attending school full time. The jackhammering and other disruptions are having an impact on the tenant's education and work. The tenant has also provided digital photographs depicting the messy environment. The tenant testified that windows in the building are still being replaced, floors in the elevators are sticky and not always available, mud is being tracked through the lobby, and the tenant's balcony is not yet finished and has no rails. Nothing has been stolen, but talk among tenants refers to construction workers hanging around the lobby after work. On one occasion the tenant was concerned about his girlfriend's safety; the tenant and his girlfriend woke up to a construction worker entering the rental unit from the tenant's balcony directly into the tenant's living room. The front doors are rarely closed.

The tenant has also provided a copy of a Decision of the director dated November 24, 2016 and testified that the hearing was held concerning a neighbour's application, and the neighbour lives across the hall from the tenant.

In closing, the tenant testified that he is a business student and understands the values and consequences and if a party is not able to deliver on a promise, they should compensate the other party. When someone pays in full, they should get service in full. Since the renal building has been taken over by the new property managers, the tenancy has been extremely reduced; no quiet enjoyment, reduced access to facilities, and water. Improvements are understandable, but the base line when the tenancy started has been reduced. The Decision which he states offers a historical perspective about living on this floor, across the hall from the rental unit in the sample Decision confirms that it is safe to assume that jackhammering will start again. Windows are on the lawn.

The tenant claims $7,500.00 in damages, being 50% of $1,200 for one year.

The landlords' agent testified that in late 2015 the first-named landlord (SI) acquired the property and brought along a property manager, the third-named landlord (LPML), who had an on-site manager until he end of September, 2016. On October 1, 2016 the new company, being the second-named landlord (DPL) became property managers.

The property management company took over this tenancy mid-way through, and the understanding of the landlord's agent is that $1,195.00 per month was the rent in place at the beginning of the tenancy, and the increase level assumed was $1,229.65 which was the amount of increase allowed in 2016, so the amount makes sense to the property management company. Where there was a communication issue with the previous property manager, the landlords' agent was not a part of that. There are no copies of Notices of Rent Increase, but a tenancy agreement and software systems from the

previous property manager are on file, but the math seems right. The rent roll of December, 2016 shows that rent is now $1,229.65. A new Notice of Rent Increase was served on the tenant by certified mail but the landlord's agent does not know when. A copy has been provided for this hearing and it is dated December 19, 2016 and states that rent is increasing from $1,229.65 by $46.50 per month to $1,275.16 per month commencing April 1, 2017 and that the last increase came into affect on April 1, 2016. The allowable rent increase for this year is 3.7%, which amounts to a $45.50 per month increase. Utilities have increased, and the landlord faces a challenge by being allowed only once per year to increase rent.

The building is a 13 or 14 story apartment complex built in the 1970s and is near the end of its useful life. Renovations are required on the exterior and interior, such as new balconies, painting and other visual upgrades on the exterior as well as common areas, lobbies, halls and laundry area. When a resident moves out, the bathrooms and kitchens are being upgraded as well as flooring where needed and replacing single pane with double pane windows.

The landlord's agent has been informed that jackhammering started at the end of June or early July, however the property management company was not employed by the owners at that time. There hasn't been any construction work since December 14, 2016; a work stoppage was put in place on the entire building, which was lifted on January 4, 2017 allowing work to resume. When construction work was going on, it was only on Mondays through Saturdays between 7:00 a.m. and 7:00 p.m. Those are the only hours of construction, which is a statutory requirement for the City. Tenants had been notified in writing of the renovations, and a copy has been provided which is dated October 30, 2015, which also advises tenants that effective November 28, 2015 the property management company, LPML has assumed the property management of the rental complex on behalf of the previous property management company, SIL.

The landlords' agent further testified that some cleanliness issues were raised by residents and the property management company has been focusing on that. A building manager and cleaning crews were brought on as of January, 2017.

Another site across the street was evacuated due to asbestos, and that building looks similar to this rental building, but they were built at different times. Environmental consultants did tests in both buildings and the report came back allowing building services to continue in the rental building.

Counsel for the landlord submits that the Decision of the director provided by the tenant is not relevant to this dispute; there have been changes since then. The hours of work are within the by-laws and notices were sent to the tenants of the building in October offering

any tenants who needed assistance to contact the landlord, but nothing was received from the tenant.

Counsel also submits that tenants are entitled to quiet enjoyment, freedom from unreasonable disturbance, however a landlord's obligation is to maintain and repair. The landlord has provided an Assessment Report noting an immediate need to address balcony deficiencies.

The Stop Work Order in place now is for interior construction in common areas and in suites that are occupied. There have been no findings of asbestos in the rental building, so no health concerns in that regard, and no reported cases of break-ins or theft.

Counsel also submits that the current rent increase of 3.7% is valid and legal.

Analysis

Firstly, dealing with the rent increases, the tenant has provided a copy of a Notice of Rent Increase dated December 19, 2016 which raises the rent from $1,229.65 per month by $44.60 to $1,275.15 per month effective April 1, 2017, and states that the last rent increase was effective April 1, 2016. The tenant has been paying $1,195.00 per month since the beginning of the tenancy and testified that he has not had a rent increase. I find it very difficult to imagine that either the previous or the new property management company wouldn't notice the discrepancy in the amount of rent payable, considering that it the tenant continued to pay the same amount for an entire year after the alleged first increase. The landlords have no records of such an increase, but rely on the rent roll passed over from the previous property management company. Perhaps the rent roll was made to allow for a proposed or forecasted amount but never actually served the tenant. In the circumstances, I am not satisfied that the first rent increase was imposed in accordance with the *Residential Tenancy Act* or the regulations. Therefore, I also find that the increase dated December 19, 2016 contains incorrect information. Pursuant to my authority under Section 62 of the *Act,* I hereby change those amounts to the amounts permitted under the *Act* and the regulations as follows:

- Amount of rent increase:
    - Current rent: $1,195.00 per month
    - Increase amount: 44.22
    - New rent amount effective April 1, 2017: $1,239.22 per month

Where a party makes a monetary claim against another party the onus is on the claiming party to satisfy the 4-part test:

1. That the damage or loss exists;
2. That the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. The amount of such damage or loss; and
4. What efforts the claiming party made to mitigate any damage or loss suffered.

In this case, the tenant seeks monetary compensation for loss of facilities and loss of quiet enjoyment of the rental unit due to on-going renovations, jackhammering, and what he described as extreme conditions affecting his sleep, his work and his education. The landlord's agent testified that the jackhammering started at the end of June or early July and work stopped on December 14, 2016. That's 5 ½ months. The landlord gave one notice to tenants, and the tenant testified there was no communication from the new property management company after that and no notices about water issues and other facilities. He also testified that he wrote to the first property management company and also to the new property management company and didn't receive any response in due time.

I have reviewed the evidentiary material of the parties including the digital evidence of the tenant. I have also reviewed the Decision of the director dated November 24, 2016 because it was provided as evidence by the tenant. That hearing involved another tenant of the landlord in the same building and on the same floor. I disagree with counsel for the landlords who submits that it is not relevant. I think it is because the testimony was taken under oath or affirmation, it involves the same building and is fairly recent, but I am not bound by it. I note particularly that the tenant in that hearing provided evidence that "… was in large part subjective and lacking in detail in some areas." It also states that the tenant's evidence about when the work started was not clear, and the Arbitrator concluded that the project started in June, 2016. In this case, I make similar findings. The tenant's evidentiary material indicates that the work started in January, 2016, however the evidence shows that the jackhammering didn't start until June or July, 2016.

I accept the submissions of the landlord's legal counsel and agent that the landlord has an obligation under the *Act* to renovate to bring the old building up to specific standards and have followed the hours of work by-law. The question before me is not whether or not the landlord has done anything wrong, but whether or not the tenancy has been devalued as a result. I am not satisfied that the tenant has established that any damage or loss exists as a result of asbestos, nor has the tenant proven the existence of such. However, I don't think there is any doubt that the tenancy has been devalued by the noise, the mess caused by construction, the pool closures, the elevators and balconies.

The tenant claims $7,500.00 in damages, being 50% of $1,200.00 for one year, but I find that to be excessive. The tenant certainly isn't entitled to receive more rent than he's paid. The tenant works and attends school, no work has been done on Sundays or after 7:00 p.m. and I find that the tenancy has been devalued by no more than 30% over 5.5 months, or $1,195.00 X 5.5 months = $6,572.50 x 30% = $1,971.75. I hereby grant a monetary order in favour of the tenant for that amount, and I order that the tenant be permitted to reduce rent for future month(s) until that sum is realized, or may otherwise recover it.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, I hereby reduce the amount of rent payable contained in the Notice of Rent Increase to $1,239.22 per month commencing April 1, 2017, and that until that time, the tenant continue to pay $1,195.00 per month.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $2,071.75, and I order that the tenant be permitted to reduce rent for future month(s) until that sum is realized, or may otherwise recover it.

This order is final and binding and may be enforced.

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 17, 2017

Residential Tenancy Branch