



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD. and IMH POOL XIV LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes DRI, MNDC, RR, O, FF

Introduction

The tenant applies for compensation for disturbance caused by renovation work on the apartment building, for a rent reduction for anticipated continued construction and to dispute a rent increase.

Both parties attended the hearing, the landlord by its agent and legal counsel, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Ms. K.H. counsel for the landlord indicated that while the respondent DP Ltd. is the property manager and the true landlord is a limited partnership. Its name has been added as a respondent in the style of cause.

Issue(s) to be Decided

Has the landlord caused excessive noise and disturbance in and around the apartment building so as to unreasonably disturb the tenant's use and enjoyment of his rental unit? If so, what damages if any has the tenant suffered as a result?

Background and Evidence

The rental unit is a two bedroom apartment in a thirteen floor, 100 unit apartment building. The tenancy started in March 2008 under an earlier landlord. There is a written tenancy agreement. The tenant says the current rent is \$1230.00 plus parking. The landlord says it is \$1245.00 plus parking. The tenant paid a \$432.50 security deposit according to the original tenancy agreement. The original tenancy agreement

shows that a \$10.00 parking charge was included in the total monthly rent. It is now \$15.00.

The current landlord acquired the property in late 2015 or early 2016. Since then it has undertaken a major renovation of the face of the building and to some rental unit inside it.

The tenant testifies about a series of issues;

Rent

She is uncertain about what her rent is. She says she did not receive the normal annual rent increase notice in the fall of 2015 and that the landlord, which is in the habit of posting notes on her door about payment of rent, has not been consistent in its calculations. So she is unsure.

Informing Tenants in the Building

The tenant says she is uncertain about what is happening with construction and tenant issues in the building. The landlord does not respond to her letters or calls. Her mail delivery was cut off without notice. She is worried about hazardous materials on the job site.

Noise

Since February 2016 the landlord has undertaken a project involving the jackhammering off of all the concrete balconies at the building. So far only the tenant's railing has been removed but, she says, the noise from the jackhammering and heavy equipment can be heard throughout the building. She describes it as being extremely high, saying it leaves her ears buzzing. She says she can hear it in her suite no matter where on the building the work is being done.

The tenant works most days away from the building but, she says, from February until September 2016 the work would start before she left for work and would persist into the evenings after she returned home. The work was conducted on Saturdays and Sundays as well during that period. The only day of silence was Canada Day; July 1.

Since September the work stops earlier; about 4 pm and there is no work on Sundays.

She was away from December 25, 2016 until January 17, 2017 and when she returned all work had stopped.

Loss of Use

The tenant was notified not to use her balcony as of September 22, 2016. On or about November 15, 2016 workmen jackhammered the railing of her balcony off. She has had no use of her balcony since then. For three months tarps hung down in front of her picture window as workmen dropped debris and chunks of concrete from the upper area of the building.

The tenant's balcony is a large one. Her pictures show it has an attractive view of the city. She kept a number of potted plants on the balcony. All have not been moved inside to the living room, taking up space there.

The apartment building comes with a heated outdoor pool and a hot tub. Those amenities have been closed to tenant use since March 2016.

Parking

The tenant says she has used stall 150 in the parking lot since she first arrived. Each rental unit has its own designated spot. The landlord leases out vacant spots to the public.

In August 2016 workmen placed large garbage containers behind her parked vehicle. That was stopped but then workmen would park their trucks behind her car, preventing her from leaving. That stopped, but then workmen commenced to place construction fencing behind her vehicle every morning, removing it at the end of the day, but preventing her from having a reliable parking spot.

As a result she parked on the street, for free, but considers it was inconvenient.

Worker Disregard

The tenant is of the view that the workmen are not handling material properly, handling hazardous material and not properly securing it.

Loss of Building Standards

With the construction work the tenant has noted that the entrance, hallways, laundry room and garbage areas have not been kept clean. She refers to photos of her hallway showing a noticeable layer of dust on the carpet and, later, a plastic covering over the carpet. She produces photos of the laundry room and garbage area. She says the hallway smells and the elevator does too.

Pets

When she moved into the building there was a “no pets” sign in the lobby. In May 2016 she discovered that her neighbours across the hall have a big dog. It runs at her in the hallway. It cries and barks. She has noticed other dogs in the building, some off leash. She thinks someone bathes their dog in the laundry room sink.

Building Safety

The tenant says she is worried about building safety. Security has lessened with the building being open and with workers coming in and out

Hallway and Common Areas

The tenant says the hallways have been overheated as well as having poor ventilation and cleanliness. The grounds around the building have not been maintained.

Water

The tenant says her tap water is “brown and yellow” and has a bleach odour. She reported it to the landlord in July 2016 but she has received no response nor improvement. She now uses bottled water to drink.

Repairs

The tenant says the landlord caused damage to her bathroom ceiling while attending to a water problem in a neighbouring unit and has not finished the repairs. The affected area needs to be sanded and painted.

General Disruption

The tenant says she has spent an inordinate amount of time trying to deal with the landlord about the problems she is having but has been ignored.

As well, the tenant says that Canada Post has declined to deliver mail to the apartment building. She must go down the street to collect her mail and that facility is only open during hours that she is normally working.

In response to the tenant's evidence, the landlord produces a letter to the tenant dated November 18, 2015 enclosing a standard Notice of Rent Increase. The Notice imposes a rent increase from \$1210.00, not including parking, to \$1245.00, not including parking, effective March 1, 2016.

Ms. H. for the landlord says that the work on the exterior of the building is work required to be done having regard to the age of the building. It was known to the landlord at the time of purchase. She says the jackhammer work only goes from 8:00 or 8:30 a.m. to 3:30 p.m. and never on Sundays.

The work started on January 15, 2016. The landlord has voluntarily stopped work as of January 4, 2017 but intends to restart the work on May 1, 2017. She confirms that at some point the tenant's (and every other unit's) balcony will be taken right off.

She says that the landlord has unilaterally reduced the tenant's rent to take off the parking portion.

She has no knowledge of a "no pets" sign or of any water problems.

Mr. S. the property manager has been involved with the apartment building since DP Ltd. took over in October 2016.

He confirms the hours of work stated by Ms. H. and that any additional work must be "quiet work."

Analysis

I accept the tenant's evidence about the living conditions in her apartment and the building. She gave her evidence in a straight forward manner both directly and while being questioned by Ms. H. She has been thorough in describing her experience and has shown great patience given the state of her accommodation over the last year.

A tenant is entitled not to be unreasonably disturbed by his landlord. The Residential Tenancy Branch has incorporated that right into its interpretation of the covenant for quiet enjoyment. Residential Tenancy Policy Guideline 6, "Entitlement to Quiet Enjoyment" states

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.

At the same time, a landlord is under an obligation to repair and maintain the premises. A tenant is obliged to accommodate the landlord for some inconvenience inherent while carrying out that work.

In this dispute I find that the work being conducted by the landlord goes well beyond normal maintenance and repair. It is a major renovation of a major portion of the exterior of the apartment building.

I find that the noise, inconvenience and general disruption experienced by the tenant are well beyond the level and duration a tenant might be expected to accept.

Between January 2016 and late September 2016 the tenant's rental unit resonated with the sound of jackhammers and heavy equipment. I find the noise and vibration went well into the evenings and on weekends. The duration abated somewhat in October 2016, leaving evenings and Sundays quiet.

The tenant was at work most days but her enjoyment of her rental unit was severely reduced evenings and weekends.

This disturbance has ceased since January 2017 but the tenant has been left with the inconvenience of living in what amounts to a construction site.

Over the last year she has lost of the use of the pool and hot tub. Her evidence about her habit of using either of these facilities is vague, but I find they were an amenity she paid for and did use on occasion.

I find that the tenant is entitled to her own parking spot under the tenancy agreement and that she was denied that spot on various occasions over the period of August to September 2016.

In regard to the renovation work in the rental unit across the hall from the tenant I find that such occasional renovation work is something a tenant must put up with living in an apartment building and that the landlord is not responsible for inconvenience the tenant suffered as a result.

The tenant's evidence has not satisfied me that the tap water in her suite is unsafe or unhealthy. Nor has she shown that there is a likelihood of exposure to hazardous materials from the construction work.

The original tenancy agreement the landlord has filed does not appear to prohibit pets. While it may have been a policy imposed by the original manager back when the tenant moved in, the tenant has not satisfied me that it was a term of her tenancy that not pets would be permitted in the building.

General Inconvenience from Construction Work

Rather than attempt to quantify each aspect of the loss of amenity the tenant has related from January 2016 to April 2017, I consider a monthly reduction to be appropriate as compensation for the noise and inconvenience related to the exterior renovation project, the general deterioration of the condition of the common areas, the loss of parking, the loss of use of her balcony, the postal inconvenience and the loss of the pool and hot tub.

Having regard to the foregoing I award the tenant 50% of her rent from January to September 2016, an amount of \$5445.00. I award her 30% of her rent from October to December 2016, an amount of \$1089.50 and I award her 20% of her rent from January 2017 to and including April 2017, an amount of \$968.00. Under this head I award the tenant a total of \$7502.50.

Rent

I find that the tenant was given a Notice of Rent Increase in November 2015 to be effective March 1, 2016 raising her rent to \$1245.00. She may not recall seeing it or may have accidentally discarded the letter, but I consider it more likely than not that it was sent.

However, the notes from the landlord that were posted to the tenant's door, show that the landlord was ambiguous about the new rent and could not give the tenant a reasonable accounting of what her rent was. As a result, I direct that the new rent of \$1245.00, not including parking, be effective only from May 1, 2017 and that any arrears or credits the tenant might owe or be entitled to are hereby dissolved.

I refrain from awarding an ongoing rent reduction. Work is to recommence on the building on May 1. It would appear that the work will be conducted in a different manner than it had between January and October 2016, with no evening or Sunday work. The amenities the tenant has lost may be restored. It cannot be reasonably predicted that the tenant will suffer the disturbance and inconvenience she has since January 2016. She will suffer some loss and inconvenience with the continuation of work. She will be without a balcony for an indeterminate period and I consider the tenant's loss of the use of her balcony to be a significant loss.

Nevertheless I decline to quantify that future loss now, hoping the parties can reach an accommodation and if not, the tenant may re-apply in due course for an award for the time period from May 1 2017 onward.

Conclusion

The tenant will have a monetary award against the landlord the limited partnership in the amount of \$7502.50 plus recovery of the \$100.00 filing fee for a total of \$7602.50.

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: April 30, 2017

Residential Tenancy Branch