



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding METCAP LIVING MANAGEMENT INC. and IMH POOL XIV LP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, RR, O, FF

Introduction

The tenant applies for compensation and for a rent reduction for the loss of use of the balcony to his apartment and the interference with his daily living caused by construction on the apartment building.

Both parties attended the hearing 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.

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? Has the tenant lost a facility; his balcony? If so, what damages if any has the tenant suffered as a result?

Background and Evidence

The rental unit is a one bedroom apartment on the twentieth floor of a twenty four floor apartment building containing 168 units. The tenancy started in November 1996 with a prior landlord. The tenant's current monthly rent is \$1026.00, as of March 1, 2017. The landlord holds a \$358.00 security deposit.

The tenant testifies that after a warning notice on September 22, 2016, his use of his covered balcony was stopped. The balcony railing was removed by men operating jackhammers over a period of two days starting September 26 and then, in February

2017, workers returned for a week to remove more of the balcony, again with jackhammers.

The tenant has provided video evidence to demonstrate the intensity of the noise created in his apartment by this work.

The landlord is in the process of removing all the balconies to all the apartments in the building. The tenant says the work on the building started in January 2016. He says the work on other units disturbs the use of his apartment. The work is composed of jackhammering, drilling and pounding.

The tenant testifies that during the weekdays the noise is constant and the vibration goes right through the building. He presents video evidence of the general noise. It could be heard in the background during this telephone hearing.

He complains of a general dustiness caused by the concrete removal.

The tenant is 62 years old and has a disability. He is not at a job away from his apartment during the day, as other tenants might be.

He is advancing his education through at-home courses. He says his studying is now confined to the evenings because of the noise.

The tenant has a hobby involving modest woodworking and tiling. It is his habit to sand, stain and glue things on the balcony and he can no longer do that. He cannot hear his television or talk on the telephone at times due to the general work noise. He cannot have visitors over during the day because of the noise and vibration.

Collaterally related to the work on the building, the tenant says he has received notices regarding water shut-off, rekeying apartment doors and door renovations that have inconvenienced him.

The tenant complains that his mailbox has been broken into twice. He confirmed that he seeks no compensation regarding it.

Ms. P. testified for the landlord. She is the on-site property manager. She states that the project; the removal and replacement of all the concrete balconies around this apartment building (and its neighbouring sister buildings) is necessary work because the concrete is deteriorating. Some of it is falling away. As well there is an issue with the drains on the balconies.

The work has been delayed because of the extraordinary weather over the last winter.

She says the landlord provides the tenants in the building with updates and notices. It has also provided the tenants with a “quiet room” away from the noise.

The tenant indicates that the quiet room lacks privacy and houses perhaps five or six people at a time. It is of little benefit to him.

Analysis

Both the tenant and Ms. P. gave their evidence in a clear, straightforward manner. The tenant corroborated much of what he said with his digital and photographic evidence. I accept the testimony of both without reservation.

As well, the very able submissions of Mr. C. are appreciated. I have considered them fully in conducting this analysis and reaching these conclusions.

A tenant is entitled to not 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, to take place over many months.

I find that the noise, inconvenience and general disruption experienced by the tenant are well in excess of the level and duration any tenant might be expected to accept as part of a landlord's obligation to maintain the rental unit.

Mr. C. raises the argument that there has been no breach of any local government bylaw. The fact that the work may not be in breach of a local government has little impact in my view. Such bylaws, like the one submitted by the landlord, are meant to set a reasonable noise level during different parts of the day in order to protect neighbours to the property, not persons present on the property. That is why decibel levels are to be measured under the bylaw from the property line and not within the boundaries of the property itself.

I find that the tenant's balcony is an integral part of his rental unit. The fact that it might not be listed as a "facility" in his tenancy agreement is not significant. The tenant has chosen to refer to it as a facility but that does not change the fact that it is a significant aspect or feature of the high-rise apartment. It represents a significant portion of the tenant's useable space.

The tenant is entitled to be compensated for loss of use of his balcony and for the deterioration in the amenity of his rental unit caused by the ongoing renovation to the balconies and exterior of the apartment building.

The tenant has proposed his loss of use of the balcony be calculated on a square foot basis. I don't agree this is a reasonable method. Balcony space, even to a person who uses one a lot, is of considerably less value than space inside a heated apartment.

Having regard to all the circumstances I assess the loss of the balcony to this particular tenant at the amount of \$120.00 per month and I award him \$960.00 for that loss from the end of September 2016 to and including the month of May 2017.

I direct that commencing June 1, 2017 the tenant's rent be reduced by \$120.00 per month, from \$1026.00 to \$906.00 for lack of a balcony and that the rent reduction continue until the first of the month following the date the landlord provides the tenant with confirmation in writing, either from an authorized person with the local government or from a qualified engineer, that the balcony is suitable to be occupied and used.

The tenant has been burdened with what I consider to be an extraordinary intrusion of noise and vibration from jackhammers and drills and other heavy equipment, with workmen going back and forth and with the general activity and clamor associated with such work. I consider his valuation of his loss at \$120.00 per month to be conservative. I award him the amount of \$1800.00 for his loss under this head, from March 2016 up to and including the month of May 2016.

Further, I direct that the tenant's rent be reduced by an additional \$120.00 per month, from \$906.00 to \$786.00 commencing June 1, 2017 and continuing until the first of the month following the date that the landlord provides the tenant with confirmation in writing from the project engineer or other qualified person that all jackhammering and/or drilling related to balcony removal on the building has been completed.

Conclusion

The tenant's application is allowed. He is entitled to a monetary award of \$2760.00 plus recovery of the \$100.00 filing fee. A monetary order in the amount of \$2860.00 will issue in his favour, which he may deduct from future rent.

He is entitled to two independent rent reductions of \$120.00 each, on the terms set out above.

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: May 01, 2017

Residential Tenancy Branch