



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

On December 19, 2016, the Tenant applied for dispute resolution seeking money owed or compensation for damage or loss under the *Residential Tenancy Act* (“the Act”), regulation, or tenancy agreement. On December 30, 2016, the Tenant amended the Application to increase the amount of the claim, and to include a future rent reduction due to loss of use of the rental unit.

The Landlord and Tenant attended the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Tenant entitled to a monetary order for money owed or compensation for damage or loss?
- Is the Tenant entitled to a rent reduction for loss of use of the rental unit?

Background and Evidence

The parties testified that the tenancy began on July 1, 2011. The Tenant pays monthly rent of \$1,286.25 on the first day of each month.

The Tenant testified that he is not getting everything agreed to in the tenancy agreement and he is seeking compensation for a loss of quiet enjoyment of the rental property due to a construction project on the property.

The Tenant submitted that his quiet enjoyment has been breached and he submitted that he is entitled to a rent reduction. He is requesting a 50% rent reduction for the past 17 months. The Tenant is seeking \$4,375.00 for the period of December 2016, to June 2016, and is seeking \$7,717.50 for the period of June 2016, to June 2017.

The Tenant is also seeking a 50% rent reduction for future loss of use of the rental property.

The Tenant provided the following testimony which I have summarized:

- The Landlord did not provide a caretaker for the rental property until February 2017.
- There was noise on the property which continued for months due to the Landlord demolishing the balconies with jack hammers.
- The Tenant has had no use of his balcony since December 2015.
- There was noise caused from the renovation of other suites in the rental property.
- The Landlord was careless in the handling of asbestos.
- The property has debris and garbage on the back lot.

The Tenant testified that the noise from the balcony demolition began in May 2016, and continued until the end of December 2016. He testified that there is no work being done on the balconies since then, and he still has no use of his balcony. The Tenant testified he wants ongoing compensation for the loss of use of his balcony.

The Tenant testifies that the noise from the renovation of vacant suites took place between December 2015, to May 2016.

The Tenant testified that he is retired and stays in his unit most of the time. He testified that the noise was so bad that it disturbed him to the point that he had to leave the rental property at times.

The Tenant provided 10 color photographs showing the construction in and around the rental property.

The Tenant testified that there was a stop work order for the rental property due to concerns with asbestos.

In response, the Landlord's lawyer Ms. K.H. questioned the Tenant on the reason the Tenant is seeking 50% of the rent. The Tenant replied that the amount he is seeking is arbitrary, but he believes the amount is fair. He testified that he is aware that other occupants have been awarded compensation.

Ms. K.H. submitted that the Landlord has an obligation to maintain and repair the rental property. The Landlord referred to the Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment that states it is necessary to balance the Tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

The Landlord also pointed out that the Landlord has an obligation to provide and maintain the residential property under section 32 of the Act. The Landlord submitted that the Tenant has to allow for some inconvenience.

The LL The Landlord submitted that the occupants of the property were given advance notice in October 2015, of the construction and were invited to contact the Landlord with concerns.

Ms. K. H. submitted that the balcony construction is required to replace the balconies due to concrete deterioration. The Landlord referred to documentary evidence of a property condition assessment in support of her submission. She submitted that the jack hammering started in mid-June 2016, and stopped in mid-December 2016. She submitted that there has not been any further construction since the end of December 2016. She submitted that the construction was permitted from 8 am to 8 pm, but only occurred between 8:30 am to 3:30 pm.

Ms. K.H. submitted that there was renovation completed on vacant suites, the noise for that construction was not excessive.

Ms. K.H. submitted that there is no obligation for a Landlord to have a caretaker work or reside in the rental property. The Landlord submitted that there were cleaning protocols in place. She submitted that a building manager was hired in January 2017.

Ms. K.H submitted that there was a stop work order for the property due to asbestos concerns, but the testing results indicated that nobody was exposed to asbestos.

The Landlord submitted that the Tenant's claim for to recover 50% of the rent paid is excessive based on the lack of a tangible loss suffered by the Tenant. The Landlord submitted that the Tenant did not suffer any loss due to the security of the building.

The Landlord submitted that the Tenant's request for a future rent reduction of 50% of the rent is the same amount that the Tenant is claiming for a loss of quiet enjoyment. The Landlord submitted that the Tenant should be required to reapply for compensation if he feels he has suffered a loss.

The Landlord submitted that one of the Tenant's documents appears to have been authored by another occupant who applied for compensation for similar issues.

The Tenant responded that other occupants on the property have shared information with him; however, the document is the Tenant's document.

The Tenant submitted that the jack hammering did not stop until the end of December 2016. The Tenant provided a photograph taken on December 26, 2016, shows that the work on some balconies had not been completed.

Analysis

Section 28 of the Act, states that a Tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

*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.*** [my emphasis]

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental* [my emphasis]

The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

Section 32(1) of the Act states that a Landlord must provide and maintain residential property in a state of decoration and repair that:

- (a) *complies with the health, safety and housing standards required by law, and*
- (b) *having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.*

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I make the following findings:

I find that there was construction on the rental property from December 2015, to the end of December 2016. I find that the construction was necessary for the Landlord to maintain and renovate the property; however, I find that the ongoing noise and inconvenience resulted in a loss of quiet enjoyment for the Tenant.

I accept the Tenant's testimony that he had no use of his balcony since December 2015, and that noise from the balcony demolition began in May 2016, and continued until the end of December 2016. I accept the Tenant's testimony that the noise disturbed him to the extent that he occasionally had to leave the property. I find that the

Tenant is entitled to compensation for the noise that occurred from May 2016, to December 31, 2016.

I accept that the Landlord performed renovations to vacant suites in the building between December 2015, to May 2016. I find there is insufficient evidence from the Tenant that the noise from these renovations was substantial enough to constitute a breach of quiet enjoyment of the property.

I find that the Tenant provided insufficient evidence that he suffered any loss related to the security of the building during the construction.

With consideration to the submissions and evidence from the Landlord and Tenant, I find the Tenant's claim for a 50% rent reduction for a breach of quiet enjoyment is not reasonable. The Tenant has not substantiated a loss of 50% of the monthly rent. I find an award of 20% for loss of quiet enjoyment to be more reasonable based on a claim of this type.

I also find that the Tenant has suffered a loss of value of the rental unit due to not having use of the balcony. I find that the Tenant's claim for a 50% rent reduction for loss of use of the balcony is not reasonable. The balcony is only a small percentage of the square footage of the rental unit and the Tenant has full use of the rest of the rental unit. I award the Tenant a 10% rent reduction for past and future loss of use of the balcony.

I find that the Tenant is entitled to compensation for a loss of quiet enjoyment between May 2016, until the end of December 2016, and loss of use of the balcony from December 2015, until June 2017.

The Tenant paid rent of \$1,250.00 from December 2015, until the end of May 2016. The Tenant pays monthly rent of \$1,286.25 from June 2016, onwards.

I award the Tenant compensation as follows:

Loss of Balcony	December 1, 2015, to May 31, 2016	6 months	10%	\$750.00
Loss of Balcony	June 1, 2016, to June 30, 2017	13 months	10%	\$1,672.06
Loss of Enjoyment	May 2016	1 month	20%	\$250.00
Loss of Enjoyment	June 1, 2016, to December 31, 2016	7 months	20%	\$1,800.75

Pursuant to section 67 of the Act, I grant the Tenant a monetary award of \$4,472.81. The monetary award is comprised of \$2,050.75 for the loss of quiet enjoyment and \$2,422.06 for the loss of use of the balcony.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with his application for compensation. I authorize the Tenant to deduct the amount of \$100.00 from a future rent payment.

I order that the Tenant may deduct the amount of \$4,572.81 from future rent payments.

The Tenant is authorized to reduce his monthly rent by 10% as of July 1, 2017, until such time as the parties agree the Tenant is able to use the balcony, or until the Landlord obtains an order from an Arbitrator that the Tenant is able to use the balcony.

Based on a monthly rent amount of \$1,286.25, the Tenant is authorized to reduce his monthly rent by \$128.62.

Conclusion

The Tenant is awarded \$4,572.81, for loss of use of the rental unit and for a loss of quiet enjoyment. I authorize the Tenant to deduct \$4,572.81 from future rent payments.

The Tenant is also authorized to reduce his rent by 10% from July 1, 2017 onwards, until such time that he has use of the balcony.

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: July 13, 2017

Residential Tenancy Branch