



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes MNDC RR FF

Introduction

This hearing dealt with two separate applications against the same landlord from the above named tenants pursuant to the *Residential Tenancy Act* (the “Act”) for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The parties acknowledged service of the respective evidence packages.

As the issues raised in both applications were similar including the amount of compensation requested, the two applications were heard together in this hearing.

Issues

Are the tenants entitled to a monetary order for compensation for loss?

Are the tenants entitled to a reduction in rent?

Are the tenants entitled to recover the filing fees for these applications from the landlord?

Background & Evidence

The rental units are apartment units in the same high rise building which is one of four multi-unit buildings on the property. The buildings were constructed in 1973 and are now 44 years old now. Unit #1201 is 788 square feet plus a balcony. Unit #202 is 734 square feet plus a balcony. The tenants provided measurements and submit the

balconies are approximately 150 square feet. The landlord submits the balconies are only 100 square feet but did not provide any measurements. I accept the tenants measurements as being accurate and find the balconies are approximately 150 square feet.

Both tenancies began over 5 years ago and the monthly rent is the same for both units at \$1026.00 effective March 1, 2017. Prior to this the rent was \$990.00 for each unit.

The tenants provided affirmed testimony, argument and evidence as follows:

- There has been ongoing construction at the property since April 2016 to present.
- They have suffered the loss of use of their balconies since April 2016.
- They have suffered loss of quiet enjoyment due to the on-going heavy construction noise since June 2016.
- The tenants are seeking a 25% reduction in rent retroactive to April 2016 for loss of use and 50% reduction retroactive to June 2016 for loss of quiet enjoyment.
- The tenant is also seeking a similar rent reduction until the completion of the construction.
- The tenants calculate the balcony space to be 20% of the total square footage of the unit and are claiming a 25% reduction arguing the balcony is a special feature.
- The tenants argue they can no longer enjoy fresh air and bar-b-q from their balconies.
- The tenants argue that since the balconies have been closed off they are only able to open the balcony doors 4 inches.
- In support of the loss of quiet enjoyment claim the tenants submitted various photos and videos demonstrating the extent of the noise and construction.
- The tenants argue the construction is purely a renovation and not a necessary repair.

Upon cross-examination, the tenants testified as follows:

- They removed everything from the balconies in response to a landlord notice in April 2016.
- Notices to remove items from balconies received after this date were sent to all tenants regardless of whether they had complied with previous notices.
- They believe the construction began June 2016 but did not have any concrete evidence to back this aside from a Notice from the landlord stating construction was to be for the period of May 2016 to May 2017.

On behalf of the landlord, the property manager S.P provided affirmed testimony as follows:

- She is the on-site property manager and she provides updates to the residents based on her conversations with the construction manager.
- She works out of one of the towers under construction and is able to carry out her job duties by working through the construction noise.
- The rental complex was built in 1973 and the exterior of the buildings is deteriorating requiring replacement of all the concrete balconies with glass and aluminum railings.
- The concrete walls are also being repaired and reinforced.
- The renovation work was necessary as chunks of concrete were falling from balconies to the ground below causing a safety hazard and there was also drainage issues with the concrete balconies.
- There has been no previous envelope renovation to the buildings.
- The balcony renovation is done in phases. The concrete removal takes approximately 1 week per suite.
- The worst of the noise from the jackhammering of the concrete balconies takes approximately 1 week for each individual balcony. The noise level decreases as the construction crews move away from the tenant's suite.
- The work is all done within city by-laws between 8:00 and 4:30 Monday to Friday and occasionally on Saturdays.
- The project was delayed 90-120 days beyond original completion estimates due to the extremely cold and snowy winter.
- The current expected completion date is in the fall of 2017.

Counsel for the landlord submitted argument as follows:

- The landlord does not dispute loss of use of the balcony but argues the tenant had use of their balconies until July 2016.
- While the tenants may have removed items from the balconies, they were not closed off until construction began in July 2016.
- The balconies are not a material term of the tenancy agreements.
- The balcony is less essential than kitchen, bathroom and bedroom areas of the rental unit in that it does not provide any shelter and is not essential for day to day use.
- The landlord submits the tenants' right to quiet enjoyment must be balanced against the landlord's responsibility to repair and maintain the rental unit.

- The tenants are only speculating the renovation was not a necessity.
- The landlord submitted testimony that the repairs were necessary.
- All of the renovation work has been done in accordance with the city by-laws.

Analysis

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all the details of the submissions and/or arguments are reproduced here.

Subsection 32(1) of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by the tenant.

Pursuant to section 28 of the Act, a tenant is entitled to quiet enjoyment of the rental unit including but not limited to rights to the following:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession of the rental unit, subject to the landlord's rights contained in section 29; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline #6 "Entitlement to Quiet Enjoyment" provides the following guidance:

In order to prove a breach of the entitlement to quiet enjoyment, the tenant must show that there has been substantial interference with the ordinary and lawful enjoyment of the rental premises. This includes situations in which the landlord has directly caused the interference or was aware of the interference but failed to take reasonable steps to correct it. It is also necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. Temporary discomfort or inconvenience does not constitute a basis for a breach under this section. In determining the amount by which the value of the tenancy has been reduced, consideration will be given to the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation existed.

Pursuant to section 65(1)(f) of the Act, if the director finds that a landlord has not complied with the Act, the regulations or the tenancy agreement, the director may issue an order to reduce past or future rent by an amount equivalent to a reduction in the value of a tenancy agreement.

There was no dispute that the landlord is in the process of completing extensive renovation work to the exterior of not only the building the tenants reside in but also three similar multi-unit complexes on the property. There was no dispute that the building was approximately 44 years old.

As per section 32 of the Act, the landlord not only has the legal right but also the obligation to maintain and repair the residential property. In conducting the extensive repairs to the exterior of aging rental complex, the landlord is within their rights and obligations under the Act. I accept the landlord's testimony that the aging concrete balconies and walls were in disrepair requiring extensive renovation and repair. Further, I note that the Act requires the landlord to maintain and repair. The purpose of maintaining a rental unit is to prevent the rental unit from falling into disrepair in the first place. As such, the tenants' argument that the renovation work on a 44 year old building was not necessary is rubbish.

As per Policy Guideline #6, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises. I find that the tenants claim for loss of quiet enjoyment is nothing more than a temporary discomfort and inconvenience which does not constitute a basis for a breach under this provision. There was no dispute that all of the construction work was being completed within city by-laws and any noise would have been restricted to these hours. It was also not disputed that the worst of the noise was during the jack-hammering phase which lasted only approximately one week per individual suite or balcony. I find that the temporary discomfort and inconvenience of this extensive renovation work is magnified by the fact that the rental complex is one of four multi-unit buildings in the complex. I find that this unfortunately comes with the territory of residing in such a complex. An extensive renovation project such as this cannot be expected to complete in a matter of months like it would if it were a single rental unit. I also accept the landlord's testimony that the severe winter in the dispute city resulted in 3-4 months delay prolonging the project. The tenants' claims for compensation for loss of quiet enjoyment are dismissed.

I find the tenants did suffer a loss in form of loss of use of the balconies. The landlord did not dispute the loss of use of the balconies but did dispute the date on which the balconies were no longer useable. I accept the landlord's evidence that the

construction work did not begin until July 2016 therefore the tenants are entitled to a loss of use award effective this date. Although I accept the tenants' evidence that they may have cleared off their balconies in April 2016 the tenants have not provided sufficient evidence to support a claim for loss during the period between clearing off the balconies and the actual beginning of construction work. For instance, the tenants could have provided picture evidence or testimony to support loss of use from clearing and storing away patio or bar-b-q furniture during this period even though they may have still had access to the balconies. In the absence of such evidence, I find the tenants only suffered a loss of use beginning in July 2016 as they lost complete access to the balcony from this date onward.

As the tenants continued to occupy and otherwise make use of the rental unit during the period in question, it is difficult to quantify the reduction in the value of their tenancies.

The balconies are approximately 16-17% [$150/(788+150)$ and $150/(734 +150)$] of the overall square footage of the rental units and are neither essential to the tenants use of the rental unit as living accommodation or a material term of the tenancy. Based on a strict square footage calculation, 16-17% of the rental unit would constitute approximately \$160.00 of the monthly rent. However, as stated above, I find the balconies are not as essential to the living accommodations as would be kitchen, bathroom or sleeping areas. As such, I find the tenants are entitled to the nominal amount of \$50.00 per month as compensation for loss of use of their balconies for the 13 month period from July 1, 2016 to July 31, 2017 for an award of \$650.00 each.

The tenants are each permitted to a one time deduction of \$650.00 from a future rent payment.

In addition to the above \$650.00 reduction for past rent, the tenants are also entitled to a future rent reduction of \$50.00 per month each for continued loss of use of the their balconies up to the date on which the use of their respective balconies is restored.

As the tenants were only marginally successful in this application, I find that the tenants are not entitled to recover the \$100.00 filing fees paid for this application from the landlord.

Conclusion

I find the tenants are entitled to the nominal amount of \$50.00 per month as compensation for loss of use of their balconies for the 13 month period from July 1,

2016 to July 31, 2017 for an award of \$650.00 each. The tenants are each permitted to a one time deduction of \$650.00 from a future rent payment.

In addition to the above \$650.00 reduction for past rent, the tenants are also entitled to a future rent reduction of \$50.00 per month each beginning on August 1, 2017 for continued loss of use of the their balconies up to the date on which the use of their respective balconies is restored.

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 26, 2017

Residential Tenancy Branch