



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 350 & 360 DOUGLAS APARTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

This Decision has been amended following receipt of the Tenants' Request for Clarification, received at the Residential Tenancy Branch on February 6, 2018. Added text has been underlined; deleted text has been struck through.

Dispute Codes MNDC OLC RP FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on May 5, 2017 (the "Application"). The Tenants applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for money owed or compensation for damage or loss;
- an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement;
- an order that the Landlord make repairs to the unit, site, or property; and
- an order granting recovery of the filing fee.

The Tenant A.K. attended the hearing on her own behalf and was assisted by an advocate, Y.K. The Tenant R.K. attended the hearing on December 6, 2017, but did not participate. The Landlord was represented at the hearing by G.S. and R.K., agents, who were accompanied by K.H., legal counsel.

On behalf of the Tenants, A.K. testified that the Application package was served on the Landlord by registered mail on May 16, 2017. In addition, A.K. testified that a further documentary evidence package was served on the Landlord by registered mail on June 2, 2017. On behalf of the Landlord, K.H. acknowledged receipt of these documents.

The Landlord submitted a documentary evidence package in response to the Tenants' Application. According to K.H., it was served on the Tenant by registered mail on May 17, 2017. The Tenant acknowledged receipt.

No issues were raised with respect to service or receipt of the above documents. The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Preliminary and Procedural Matters

During the hearing, counsel for the Landlord asked that the Application be amended to reflect the correct legal name of the Landlord. The Tenants agreed. Pursuant to section 64 of the *Act*, I amend the Application to reflect the correct legal name of the Landlord.

In addition, the parties submitted further documentary evidence following the hearing on September 22, 2017. The Landlord's additional documentary evidence was received at the Residential Tenancy Branch on November 28, 2017. The Tenants' additional documentary evidence was received at the Residential Tenancy Branch on September 18, 2017. Both parties acknowledged receipt of the other's documentary evidence and no issues were raised with respect to the admission of the documentary evidence.

Issues to be Decided

1. Are the Tenants entitled to a monetary order for money owed or compensation for damage or loss?
2. Are the Tenants entitled to an order that the Landlord comply with the *Act*, regulation, or a tenancy agreement?
3. Are the Tenants entitled to an order that the Landlord make repairs to the unit, site, or property?
4. Are the Tenants entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence by the Tenants. It confirmed a fixed-term tenancy from June 1, 2016 to May 31, 2017. Since June 1, 2017, the tenancy has continued on a month-to-month basis. Currently, rent in the amount of \$1,928.82 per month is due on the first day of each month. The Tenants paid a security deposit of \$930.00, which the Landlord holds.

The Tenants applied for an order that the Landlord complete certain repairs in the rental unit as promised by the previous landlord. The Tenants also requested monetary compensation for loss of quiet enjoyment arising from ongoing construction and renovations at the rental property, and for a loss of services and facilities.

The repairs the Tenants seek to have completed were listed on a document submitted into evidence. The Tenants' list included requests to replace shelving in bedroom closets, fix the alignment of all doors, replace all windows, realign the dishwasher, refinish scratches on closet doors, cover the smoke detector, and caulk kitchen and bathroom countertops. A.K. testified that these and other repairs remain outstanding, and that the rental unit is not "newly renovated" condition as described in the advertisement posted by the previous landlord.

A.K. testified that a list of repairs, which included some of the above items, was emailed to the previous landlord on June 25, 2016. A copy of the email was submitted with the Tenants' documentary evidence. According to A.K., the Tenants subsequently submitted a Maintenance Request Form, dated September 30, 2016, a copy of which was submitted with the Tenants' documentary evidence. The form refers to a renovation sign-off form, also submitted with the Tenants' documentary evidence. The renovation sign-off form listed a number of items to be addressed in the Tenants' rental unit and indicated a scheduled completion date of the work was to be June 1, 2016.

On behalf of the Tenants, A.K. also referred me to an email, dated November 25, 2016. The email was addressed to the previous landlord. A copy of the email was submitted with the Tenants' documentary evidence. When asked by legal counsel for the Landlord why she did not make continued attempts to communicate with the current Landlord, A.K. responded by suggesting it was the Landlord's responsibility to convey issues to the Tenants.

On behalf of the Landlord, G.S. testified that the repairs the Landlord were made aware of have been addressed. However, he confirmed that the current Landlord took over management of the rental property on October 1, 2016, and that he was not aware of many aspects of the Tenants' repair requests. During the hearing, he provided the Tenant with his email address and offered to make reasonable repairs. As noted below, the Landlord's agent attended the property on or about September 28, 2017, to address the Tenants' concerns.

In addition, K.H. noted that the Tenants have not taken steps to effect these repairs, and submitted the Tenants have an obligation to minimize losses under the *Act*.

The Tenants sought compensation for loss of quiet enjoyment. In written submissions, they requested a 50% rent reduction from June 1, 2016 to present for "lack of privacy due to significant noise disruptions and uncleanness of suite, main entrance, hallways, elevators laundry area, windows, parking and outside areas due to ongoing building construction".

On behalf of the Tenants, A.K. testified that she was aware of the construction project when she moved into the rental unit but thought it was almost complete. She described construction noises such as hammering and machinery noises that occurred "very often". The Tenant described jackhammering noises that commenced in July or August 2016. These noises could be heard for 1-2 weeks at a time, followed by a break, after which the work would resume. This was disruptive because the Tenants work on their computers or the telephone in the rental unit. A.K. also described dust and dirt throughout the rental property. In addition, A.K. advised there were concerns about security because doors and windows were left open during construction, although she confirmed there were no specific instances where security had been breached or that gave rise to a loss.

K.H. made submissions on behalf of the Landlord. She testified that all tenants were notified of the anticipated interior and exterior construction and renovation work in 2015. At that time the project was expected to take from 24-32 months. Work was to include repairs to balconies, elevators, windows and doors, and other interior spaces. In the case of the balconies, the repairs were in response to a report that identified safety concerns. Although the Tenants moved into the rental unit after this notice was given, K.H. submitted that the Tenants were advised of the construction and renovation work at the beginning of the tenancy, which would have been obvious in any event.

The construction and renovation did not proceed without some difficulties. According to K.H., WorkSafe BC issued a stop-work order in late-December 2016, which was in effect until late-August 2017. She advised that no significant construction work occurred during this period.

The Tenant also sought compensation for loss of services and facilities. These were summarized in the Tenants' written submissions and included loss of use of the balcony, and loss of a view due to ropes hanging down and dirty windows. A.K. also advised that a social room that she hoped to use was not available because of the presence of construction materials and debris. Further, the A.K. testified that a

pool and hot tub have not been available since the tenancy began, although this is a favourite activity of the Tenants. In addition, A.K. testified that the toilet and sink in the laundry room were used by workers and were left in very poor condition. Similarly, A.K. advised that one of two elevators in the rental property was often in use by construction workers. A.K. also claimed that common areas have not been adequately cleaned, and that there has been a lack of security in the building. Further, A.K. indicated they did not have curtains or new appliances in the rental unit for a brief time after moving in. Finally, A.K. indicated that mail service was interrupted briefly, and that she had to collect mail from another location.

In reply, K.H. submitted that while there may have been some inconvenience with the elevators or with mail service, the interruption was brief. K.H. acknowledged that the balconies have been closed since November 2016 but indicated that no photographs were submitted to prove the loss of a view. With respect to the Tenants' concerns about security, K.H. referred to the Tenants' own evidence, which does not support a loss. With respect to the Tenants' allegation the rental property is not cleaned adequately, K.H. submitted that a routine cleaning schedule is followed although perhaps not to the Tenants' standards. K.H. also repeated that a stop-work order prevented significant construction work from late-December 2016 to late-August 2017.

On behalf of the Landlord, K.H. also submitted that the Tenants' claim was excessive, that the construction and renovation work arose from the Landlord's obligation to repair and maintain, and the Tenants have an obligation to minimize losses where possible.

Analysis

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

With respect to the Tenants' request for an order that the Landlord make repairs to the rental unit, section 32(1) of the *Act* states:

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 a tenant.*

[Reproduced as written.]

I find there is insufficient evidence before me to conclude that the Landlord has not met the obligation to repair and maintain the rental unit. Documentary evidence submitted by the parties confirmed that a representative of the Landlord attended the rental unit on or about September 28, 2017. Hand-written notes on the Tenants' list of requested repairs, apparently made by the Landlord's representative, indicated that many of the repairs were unnecessary. With respect to the Tenants' request for new windows throughout the rental unit, installation of security cameras, and a new key system the building, the Landlord's representative indicated these were not promised as suggested by the Tenants. I find the Landlord has met the obligation to repair and maintain the rental property as articulated in the *Act*. While

the Landlord's response might not meet the Tenants' exacting standards, perfection is not required. This aspect of the Application is dismissed.

With respect to the Tenants' claim for compensation for loss of quiet enjoyment, section 28 of the Act confirms that this right includes "reasonable privacy...freedom from unreasonable disturbance...exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 *[landlord's right to enter rental unit restricted]*...[and] use of common areas for reasonable and lawful purposes, free from significant interference".

Policy Guideline #6 elaborates on the meaning of a tenant's right to quiet enjoyment. It states:

The modern trend is towards relaxing the rigid limits of purely physical interference towards recognizing other acts of direct interference. Frequent and ongoing interference by the landlord, or, if preventable by the landlord and he stands idly by while others engage in such conduct, may form a basis for a claim of a breach of the covenant of quiet enjoyment. Such interference might include serious examples of:

- *entering the rental premises frequently, or without notice or permission;*
- *unreasonable and ongoing noise;*
- *persecution and intimidation;*
- *refusing the tenant access to parts of the rental premises;*
- *preventing the tenant from having guests without cause;*
- *intentionally removing or restricting services, or failing to pay bills so that services are cut off;*
- *forcing or coercing the tenant to sign an agreement which reduces the tenant's rights; or,*
- *allowing the property to fall into disrepair so the tenant cannot safely continue to live there.*

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of quiet enjoyment.

...

Substantial interference that would give sufficient cause to warrant the tenant leaving the rented premises would constitute a breach of the covenant of quiet enjoyment, where such a result was either intended or reasonably foreseeable.

A tenant does not have to end the tenancy to show that there has been sufficient interference so as to breach the covenant of quiet enjoyment; however, it would ordinarily be necessary to show a course of repeated or persistent threatening or intimidating behaviour. A tenant may file a claim for damages if a landlord either engages in such conduct, or fails to take reasonable steps to prevent such conduct by employees or other tenants.

[Reproduced as written.]

In this case, I am satisfied that construction noise, including jackhammering, caused the Tenants to experience a loss of quiet enjoyment of the rental unit, while construction was underway (June 1-December 31, 2016; September 1, 2017 to present). Accordingly, I grant the Tenants a rent reduction of 5.0% for the period while the construction was proceeding. The monetary award for loss of quiet enjoyment to December 31, 2017, is \$1,045.51, which has been calculated as follows:

Rental period	Rent	5.0%	Reduction
June 1-December 31, 2016 (7 months)	\$1,885.00	\$94.25	\$659.75
September 1-December 31, 2017 (4 months)	\$1,928.82	\$96.44	\$385.76
TOTAL:			\$1,045.51

With respect to the Tenants claim for compensation for loss of services and facilities, I find the Tenants have experienced a loss of use of the common room, the pool, the hot tub, and the balcony. I find the remaining alleged losses are more akin to inconveniences arising from the construction and renovation project, which I find arose out of the Landlord's obligation to repair and maintain the rental property. ~~Accordingly, I grant the Tenants a rent reduction of 5.0% from June 1, 2016, until the common room, pool, hot tub, and balcony are all made available to the Tenants.~~

For the Tenants' claim for compensation for loss of services or facilities, I grant the Tenants a rent reduction of 5.0% from the commencement of the tenancy to December 31, 2017. Accordingly, the monetary award to December 31, 2017, is \$1,806.08, which has been calculated as follows:

Rental period	Rent	5.0%	Reduction
June 1, 2016-May 31, 2017 (12 months)	\$1,885.00	\$94.25	\$1,131.00
June 1-December 31, 2017 (7 months)	\$1,928.82	\$96.44	\$675.08
TOTAL:			\$1,806.08

Further, I order that effective January 1, 2018, rent is reduced by 7.5% to \$1,784.16 per month, until and including the month in which the construction and renovation project is completed.

Having been successful, I also find the Tenants are entitled to recover the filing fee paid to make the Application.

Conclusion

I find the Tenants are entitled to a monetary award the amount of \$2,951.59 (\$1,045.51+ \$1,806.08 + \$100.00), which I order may be deducted from future rent payments at the Tenants' discretion.

Further, effective January 1, 2018, I order that rent is reduced by 7.5% to \$1,784.16 per month, until the construction and renovation project is completed. Any rent increases to which the Landlord may be entitled to are to be calculated on the full amount of rent, from which 7.5% will be deducted to determine the rent payable after the increase.

If the parties are unable to agree with respect to the month in which the construction and renovation project is completed, they remain at liberty to reapply to the Residential Tenancy Branch for a determination.

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: December 7, 2017~~

Date of Amended Decision: February 7, 2018

Residential Tenancy Branch