



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gatewerty Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the “Act”) for the following:

- A rent reduction pursuant to section 65(1).

The agents ZZ and GD appeared on behalf of the landlord (“the landlord”). The tenant appeared. Both parties were given full opportunity to provide affirmed testimony, present evidence, and examine the other party.

The landlord acknowledged being served by the tenant with the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the landlord was served in accordance with section 89.

Issue(s) to be Decided

Is the tenant entitled to a reduction in rent?

Background and Evidence

Testimony was provided by the tenant that the tenancy began on July 1, 2016 and is ongoing. Monthly rent is \$1,380.45 payable on the first of the month. The tenant paid a security deposit of \$640.00 which is held by the landlord.

The tenant explained that the unit is in a 12-storey apartment building. In March 2018, the tenant was informed that construction would begin on the building in May 2018. The notice was in the form of a letter sent to all tenants. Once construction was underway, from time to time the landlord provided written updates to the tenants setting out the

progress of the work and describing unforeseen issues which extended the estimated construction period past what was originally estimated.

The tenant testified that for four months, from May to August 2018, he suffered diminished enjoyment of the unit due to the large scale, on-going construction.

The tenant testified that he is a self-employed contractor who works from home and conducts telephone interviews for several hours a day. He explained how it was impossible for him to work from his unit. He had to relocate during the work day on several occasions during the construction, to find a place from which he could conduct his work including the phone interviews.

The tenant described the following conditions in his south-facing unit during this period:

- Noise during work days from 7:30 AM to 5:30 PM, described as jackhammers and drilling, of a volume to make working or being in his unit during these hours impossible, despite the use of headphones to try to block the sound;
- Inability to carry out any work activities in the unit between these hours because of the noise;
- Insufferable heat particularly from August 9 to 29, 2018 when window coverings were removed, and windows could not be opened for ventilation or for venting an air conditioner unit;
- Reduction of his living space by about 25% during August 2018 for approximately twenty days, when dust sheets (plastic curtains) were hung around the windows to allow their removal and replacement;
- Lack of privacy during the time the window coverings were removed allowing workers on scaffolding or occupants in other apartments to have visual access to his unit;
- Inability to open windows more than a few inches for ventilation during the time they were being replaced in August 2018;
- Lack of access to his balcony for most of the four months;
- Dust and debris seeping into the apartment and on window ledges.

The parties submitted copies of considerable correspondence in which the tenant complained about the condition in his unit and requested compensation, all requests for which were denied by the landlord.

As evidence of the issues faced due to construction, the tenant provided many photos as part of his evidentiary package supplied to the landlord and to the hearing. These

photos demonstrate evidence of construction dust in the apartment, the presence of dust sheets, the debris on window ledges, and efforts made by the tenant to keep his own possessions clean and dust free.

The tenant stated he could not move anywhere else because of the high rents and low vacancy rates.

The tenant claimed that a 25% reduction in rent was appropriate and reasonable in the circumstances, being \$345.11 per month for four months, or \$1,380.45 in total.

The landlord agreed that in May of 2018 maintenance and upgrade work began on the rental building. The landlord explained that the repairs being undertaken were necessary for health and safety reasons.

The construction included removal of substantial exterior portions of the building including considerable brick work. It also included removal and replacement of windows and balconies. This aspect of the work revealed the presence of lead and the need to take further health and construction measures which expanded the project beyond its original parameters.

The landlord did not diminish the scope of the work that was undertaken. He did, however, explain that the work was not simply cosmetic, but was being performed for the safety and benefit of the occupants. The landlord stated he did everything possible to reduce the discomfort of the work for the tenants. He testified to receiving only a few verbal complaints from other tenants and that no tenants moved out. The landlord expressed the opinion that the tenant, in attempting to work from home, brought the problem upon himself.

The landlord stated the tenant exaggerated the noise during the construction. He also claimed the tenant overstated the number of days he was without window coverings, which the landlord estimated to be no more than a few days during August 2018. The landlord also testified the tenant embellished the loss of privacy which other tenants endured without complaint and stated the dust covers were in place only four or five days during August 2018.

The parties agree that the complaints of the tenant were resolved at the end of August 2018 as construction ended on his side of the building. Repairs continue in other areas of the building.

Analysis

The parties submitted considerable evidence and testimony. Only relevant portions of the facts will be referenced in my findings.

The tenant's claim is made under section 65 of the *Act* which provides that an Arbitrator may order a tenant's rent reduced if it is found that the landlord has not complied with the *Act*, the regulations or a tenancy agreement. Section 67 of the *Act* allows an Arbitrator to issue a monetary award for loss resulting from a party violating the *Act*, regulations or tenancy agreement.

A tenant is entitled to quiet enjoyment of a rental unit. Section 28 of the *Act* provides:

28. A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

Residential Tenancy Policy Guideline 6 discusses quiet enjoyment and provides that:

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 a **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 covenant of 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.

[emphasis added]

The onus is on the party making the claim to show on a balance of probabilities that there has been a loss of quiet enjoyment because of the action or negligence of the landlord. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the

other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Residential Tenancy Policy Guideline #16 provides guidance in determining the value of the damage or loss under such circumstances. This guideline notes, “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.”

The parties testified the rental building has undergone some major renovations and repairs on both the interior and exterior of the building, particularly affecting the tenant's unit from May to August 2018. While the number of days for each inconvenience was not clearly established, the parties agree the tenant lost use of his balcony, privacy from window coverings, ability to open windows, capacity to use an air conditioner, and quiet in the unit during work hours. Primarily, the tenant claim's is based upon the inability to carry out his work activities in his unit during business hours.

The landlord provided testimony that the work was being conducted in a professional manner in accordance with local noise and construction bylaws. The tenant has not provided any evidence to the contrary.

The landlord testified the major disruption to the tenant is now over. Both parties agreed the tenant will enjoy greater amenities in the unit once all the construction is completed.

I am satisfied the tenant experienced inconvenience and disruption from the construction. However, I find the tenant was provided with two months' notice of the construction during which time the tenant could have made alternate arrangements to carry out his work during regular working hours. I find the landlord took all reasonable steps to alleviate inconvenience to the tenant while assuring the repairs were conducted efficiently and professionally. I find the situation was one of temporary discomfort or inconvenience to the tenant which does not meet the standard of proof required for a claim of loss of enjoyment, **except** for the month of August 2018.

The tenant has provided evidence to show on the balance of probabilities that the construction had affected him to the threshold of substantial interference during the month of August 2018. During all or part of this month, the tenant testified and submitted photographic evidence establishing that he had no window coverings, he could not open a window for ventilation, he could not use an air conditioner, and dust

and debris filtered into his unit. He testified to being unable to occupy his unit during the day because of suffocating heat, unbearable noise, and pervasive dust.

I therefore find the tenant has met the burden of proof to establish a loss of quiet enjoyment sufficient to warrant a monetary order or reduction in rent for the month of August 2018. I award the tenant nominal damages in the amount claimed of \$345.11, being a 25% reduction in rent for August 2017.

As the tenant has been successful in his claim, the tenant is entitled to reimbursement of the filing fee.

The tenant is therefore granted a monetary award in the amount of \$445.11, being \$345.11 rent reduction and \$100.00 filing fee reimbursement.

The tenant may make a one-time deduction in rent in the amount of \$445.11.

Conclusion

The tenant is granted a monetary order in the amount of \$445.11 and may make a one-time deduction in rent pursuant to section 72.

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: September 25, 2018

Residential Tenancy Branch