



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: RR

Introduction

The Application for Dispute Resolution filed by the Tenant seeks an order for the reduction of rent for repairs, services, or facilities agreed upon but not provided in the sum of \$15,270 based on a 60% reduction of the rent paid.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was served on September 3, 2018 by mailing, by registered mail to where the landlord carries on business. With respect to each of the applicant's claims I find as follows:

Preliminary Matter:

The representative of the landlord stated the tenant has named the agent and not the landlord in the style of cause of the Application for Dispute Resolution. Both parties agreed to my order replacing the name of the Agent with the name of the actual landlord in the style of cause.

Issues to be Decided

The issue to be decided is whether the tenant is entitled to an order for the abatement of past rent and if so how much?

Background and Evidence:

The tenancy began on May 1, 2017. The tenancy agreement provided that the tenant(s) would pay rent of \$1480 per month payable in advance on the first day of each month. The rent was subsequently increased to \$1538 per month on May 1, 2018. The

tenant(s) paid a security deposit of \$725 at the start of the tenancy. The tenancy ended on September 30, 2018.

The Law:

Section 28 of the Act provides as follows:

Protection of tenant's right to quiet enjoyment

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;
- (c) 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];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Section 32(1) and (5) provides as follows:

Landlord and tenant obligations to repair and maintain

32 (1) 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.

...

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

Policy Guideline #6 includes the following:

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

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.

A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

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.

The Tenant gave the following evidence:

- She attended a massage therapy school from January 2017 until August 2018. She lived with a friend from January 2017 to April 2017. The friend's boyfriend moved in and she had to find alternative accommodation. The vacancy rate is extremely low.
- She was aware the rental property was undergoing construction when she viewed the rental property in April 2017. The carpets in the hall were torn up. There was scaffolding around the building. However, there was no construction work taking place at the time as the project was under a stop work order. She was told that this was caused because of a dispute between a construction worker and a safety officer.
- The rental unit itself was recently renovated. The rental unit did not have curtains for the first two weeks.
- The hallways remained under construction and without carpets from May 1, 2017 to June 2018. It was unsightly. Sounds carried and people walking in the hallway were disturbing at times.
- Construction on the building started up again a few weeks after she moved in. The construction was extremely noisy and involved the following:
 - Workers would congregate in the parking lot at around 7:00 a.m. and were very noisy. This prevented her from sleeping in.
 - The construction noise including jackhammering/drilling, sawing etc.
 - The construction noises lasted from about 7:30 a.m. in the morning until 5:00 to 5:30 p.m. at night from Monday to Friday. On some occasions the noises occurred on Saturdays. There was no work done on Sundays.
 - It was extremely noisy for months and then eventually slowed down.
 - The construction work involved the replacing of balconies. There was always a lot of dust.
 - Her window in her bedroom did not close properly and the dust spread throughout her bedroom on a regular basis.
 - The ground in front of the rental property was used as a staging area. There was construction materials and debris
 - The construction noise was extremely bad for approximately 1 year easing up in June 2018.
 - The scaffolding in front of the building blocked her view and adversely affected her privacy.

- On one occasion a construction worker walked into her suite. She was in a tank top only. He froze and immediately left. She reported it to the landlord and was later told that the worker went to the wrong building. She feared for her safety after that. The landlord refused to allow her to change the locks. The workers would often prop doors to the building open during the day which is a security risk.
- The exterior windows were only cleaned once during the time she was there.
- The pool and hot tub was closed for approximately one year starting at the time she moved in. In June 2018 it was re-opened but was not properly maintained and she was discouraged from using it.
- The elevators were frequently out of order or used exclusively for construction workers. There were two elevators in the rental property. It would often take 3 to 5 minutes before one became available for use.
- On many occasions the water was shut off.
- The construction was not done properly and subjected her to hazardous materials. This has caused stress and anxiety. She worries about long term health issues that may occur.
- The tenant did not present medical evidence.
- On cross examination the tenant gave the following evidence:
 - She was aware the building was under construction when she rented the rental unit. The carpets have been torn up and there was scaffolding around the building. However, there was no construction when she viewed the rental property.
 - The pool was closed when she viewed and she did not ask when it would reopen.
 - She attended school from about 8:30/9:00 a.m. to 4:00 p.m. much of the time. There were 5 terms that lasted about 3 ½ months with a 2 week break between terms. On two days a week she attended a clinic. The clinic was either from 7:45 a.m. to 2:00 p.m. or from 2:00 p.m. to 8:00 p.m.
 - She completed the 5 term course in massage therapy and had to write 4 exams after that. The last exam was the middle of October.
 - She did not tell the landlord of the problem with the bedroom window.
 - The managers were unpleasant with her.
 - The notices of water shut off would be posted in the elevators.
 - Each of the elevators was renovated and each was down for about a week.
- The tenant testified she has found living in the rental property to be stressful and frustrating. It was extremely difficult to study at home and she would often stay away. The fumes from the paint and other construction materials make this a

very unhealthy situation. The construction prevented her from be able to enjoy her rental property.

The Agent/Advocate for the Tenant referred to the following evidence that was filed:

- I ruled that the evidence the agent wished to present about the media interest was not relevant and not admissible.
- He presented letters from KCN and VB who worked on the site attesting to the improper methods used by the contractors, the lack of professionals and lack of competency of the workers.
- CW (site supervisor) wrote a letter attesting to the improper methods and the unprofessional manner in which the work was carried out. The letter also states:

“Over the course of my career, these were by far the most unprofessional work sites I’ve experienced and I’m not surprised tenants may pursue action. With full volume construction noise daily including jack-hammers and rotary grinders, windows sealed and patio doors blocked shut, construction materials, tools and debris in common areas, large numbers of trades coming and going all day, the buildings would have been nearly impossible to live in..”

- RM (Occupational Health and Safety Consultant) provided a letter dated November 4, 2018 attesting to improper testing done by the landlord’s agent and the failure to test in tenant area and concluding:

“A risk of exposure to asbestos, lead and/or respirable crystalline silica is probable if renovations activities were conducted without effective controls in place. There is, however, no information currently available to determine whether this did or did not occur.”

- RM provided a second letter attesting to the problems that can occur from excessive noise and stating the noise levels (with the jackhammering exceeded what was permitted).
- The Agent/Advocate for the tenant referred to a WCB timeline dealing with the problems that occurred. However most of events referred in that time refer to events that happened prior to this tenancy.

The landlord gave the following evidence:

- The construction work stated in the fall of 2015. There are over 100 rental units in this building. .

- The construction work was between 7:30 a.m. and 3:30 p.m. and complied with the City of Victoria bylaws.
- A Stop Work was issued in December 2016. Work did not resume until May 2017.
- Each of the elevators was not working for maintenance for 2 to 3 days and not a week.
- The paint used is low emission paint.

Analysis:

I assessing the reduced value of the tenancy I have considered all of the evidence presented in the hearing. I determined that was appropriate to consider the reduced value of the tenancy to this tenant and not a tenant in general. For example this tenant spent much of the day hours at school and was not subject as much disruptions as some other tenant who might be home through the daytime hours. Secondly, I determined it was appropriate to consider the reduction of value of the tenancy over time. At times the construction noises were very disruptive; at other times the construction workers were not working. Finally, the Agent/Advocate presented evidence as to improper construction methods, inexperienced workers and the failure to follow proper procedures in handling hazardous materials. I accept the submission this would create anxiety in the tenants. However, I determined there is insufficient evidence to establish this tenant has suffered medical problems because of the improper methods. This tenant did not provide medical evidence to support that she has suffered medically as a result.

After carefully considering all of the evidence I determine the value of this tenancy has been significantly reduced by the actions of the landlord in the construction work that was done including, but not limited to:

- The noise of the construction workers marshalling at around 7:00 a.m. and thereafter.
- The very loud construction noises including jackhammering which last 5 days a week from late May 2017 to June 2018.
- The loss of a view caused by the scaffolding and failure to clean the exterior windows
- The loss of privacy with workers going and coming.
- The unsightly appearance of the hallways and exterior sights caused by the failure to carpet the hall and the construction site and materials.
- The anxiety created in this tenant when one of the workers entered her room in error while she was still there.

- The interruption to the water services
- The reduced senses of security caused by the workers failing to ensure the doors were fully closed and allowing the risk that strangers might enter the building without authorization.
- The failure to conduct the construction work in a professional and safe manner.
- The anxiety created by the construction practices of the contractors for the landlord creating the risk that the tenants might suffer future health problems from asbestos, lead and respiratory crystalline silica.

I determined the tenant is entitled to the following reduction of rent:

For the period May 1, 2017 to May 31, 2018 a reduction of 20% or the sum of \$296 ($\$1480 \times 20\% = \296). The construction did not resume until late May. However, the rental property including the hallways was unsightly. The tenant did not have curtains for the first 2 weeks.

For the period June 1, 2017 to April 30, 2018 a reduction of rent of 50% or the sum of \$8140 ($\$1480 \times 50\% \times 11 \text{ months} = \8140). The extreme noises and impact of the construction strongly affected the quiet enjoyment of the tenant.

For the period May 1, 2018 to May 31, 2018 a reduction of rent of 50% or the sum of \$769 ($\$1538 \times 50\% \times 1 \text{ month} = \769)

For the period June 1, 2018 to September 30, 2018 a reduction of rent of 20% or the sum of \$1230 ($\$1538 \times 20\% \times 4 \text{ months} = \1230). The tenant determined that most of the disruption from the construction (including most of the extreme noise) had been completed by that time. However, I determined the tenant's use of the pool was limited, the grounds remained unsightly and some construction work continued.

Conclusion

I ordered the landlord(s) to pay to the tenant the sum of \$10,435.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on both parties.

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 19, 2018

Residential Tenancy Branch