



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Section 74(2) of the *Residential Tenancy Act* (Act) stipulates that the director may hold a hearing in person, in writing, by telephone, video conference or other electronic means, or by any combination of the these methods.

At the request of both parties, they asked that I proceed by way of written submission, given that both parties had submitted lengthy, written submissions. Both parties indicated they were prepared to rely on their written submissions. I agreed that I would proceed as requested. I also confirmed with both parties that they were content with the evidence submitted and that a decision would be issued based on that evidence.

Issue to be Decided

Is the tenant entitled to a monetary order as compensation for loss or damage under the Act, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background, Evidence

The tenants' testimony is as follows. The tenancy began on June 1, 2011 and ended on April 30, 2018. The rent payable during the time period as alleged by the tenants was as follows:

June 1, 2015 - \$1204.00 per month

May 1, 2016 – \$1240.00 per month

June 1, 2017 - \$1275.38 per month

The tenant seeks a monetary for the following as submitted on their application:

“Claims for cumulative impact of extended and mismanaged renovations contributing to:
• *Reduced or no access to facilities (RTA 27).* • *Loss of quiet enjoyment (RTA 28).* • *Poor state of maintenance and repair (RTA 32).* *Compensation for my monetary loss - \$5000.*
\$5000 - Loss of Income. Reduce rent for repairs, services or facilities - \$20963.82
\$17882.28 - 75% Jul 2016 through Jan 2018. \$2125 - 25% Dec 2015 through Jun 2016.
\$956.54 - 25% Feb 2018 through Apr 2018”.

The tenant revised his claim and a rent return as follows:

July 1, 2016 – December 31, 2016 – 50% rent return

January 1, 2017- May 31, 2017 – 25% rent return

June 1, 2017 – September 30, 2017 – 40% rent return

October 1, 2017 – April 30, 2018 – 15% rent return

and seeks \$7000.00 for loss of income for a total claim of \$31045.00.

The tenant testified that the property was being extensively renovated during the above noted times and that they had to endure many inconveniences, annoyances, and hardship. The tenant testified that there were numerous issues. The tenant testified that in January 2016 he and his wife found out that they were expecting twins. The tenant testified that he had concerns for his pregnant wife and his other young child about whether they could endure a major renovation in the building at this point in their lives. The tenant decided that they enjoyed living in the unit so much they decided to stay. The tenant testified that there were many issues which included but not limited to loss of use of the balcony, excessive noise, dust throughout the building, loss of use of the pool, loss of use of parking at times, wires hanging down in hallways and electrical panels exposed. The tenant testified that he feels that he is being reasonable in the amount he is seeking.

Counsel made the following submissions. Counsel submits that the amount of compensation the tenant seeks is excessive and unreasonable. Counsel submits that a more modest amount is appropriate but for excessive noise and loss of balcony only.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here as they are too extensive to reproduce. For absolute clarity and brevity, I address the principal aspects of the tenant's claim and my findings around each are set out below.

It is worth noting that the tenant was extremely disorganized when presenting his claim. He was unable to answer basic questions or provide answers to the claim he put forth or able to explain the amount he noted on the application and what he was seeking on the day of the hearing. Much of his claim lack clarity or logic. The tenant presented his evidence in a very disjointed and vague fashion. In addition, the tenant would add and subtract items from his claim during the hearing and would alter the amount he was seeking. Although the tenant submitted voluminous amounts of documentation, much of it lacked clarity, was irrelevant or simply insufficient to support his claim. The tenants' documentation was submitted in a very jumbled and confusing manner that was often redundant and claimed the same item or issue more than once. The tenants' testimony and documentation were in conflict through much of the hearing, when it was; I considered the sworn testimony in coming to his monetary calculations. Residential Tenancy Branch Rules of Procedure 3.7 addresses this issue as follows.

3.7 Evidence must be organized, clear and legible

All documents to be relied on as evidence must be clear and legible.

To ensure a fair, efficient and effective process, identical documents and photographs, identified in the same manner, must be served on each respondent and uploaded to the Online Application for Dispute Resolution or submitted to the Residential Tenancy Branch directly or through a Service BC Office.

For example, photographs must be described in the same way, in the same order, such as: "Living room photo 1 and Living room photo 2".

To ensure fairness and efficiency, the arbitrator has the discretion to not consider evidence if the arbitrator determines it is not readily identifiable, organized, clear and legible.

In contrast, counsel for the landlord submitted a compelling cogent argument and submissions highlighting the tenants own choice to remain a tenant and the landlords responsibility to maintain the property as per section 32 of the Act, and the long term benefit to all tenants in having an extensive upgrade and renovation done. Counsel further illustrated the tenants lack of mitigation as outlined under section 7 of the Act and how the tenant made a conscience and calculated choice of his own will to remain and live through the renovations. Counsel submits that modest and reasonable rent rebates should be applied to the loss of use of the balcony and for noise from exterior renovations.

When considering what, if any amount is appropriate I have turned my mind to section 67 of the Act and the requirements to successful. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The

claimant must provide **sufficient evidence of the following four factors**; the existence of the damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the other party, the applicant must also show that they followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Loss of Income - \$7000.00

I first address the tenants claim for loss of income of \$7000.00. The tenant testified that he works from home but that was no longer feasible due to the noise and ongoing construction. The tenant did not provide sufficient evidence such as cancelled contracts or letters of intent to hire him for specific work for a specific amount. In addition, the landlord is not obligated to provide optimal conditions so that a tenant can carry out a business. The landlords' obligation is to ensure they are acting in accordance to the residential tenancy agreement that the parties entered into, which I find they have. Based on the above, I dismiss the tenants claim for loss of income.

Compensation Claim – \$24, 045.00

Section 28 of the Residential Tenancy Act speaks to a tenant's right to quiet enjoyment, and provides as follows:

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.

Further section 7 of the Residential Tenancy Act states:

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Although I accept that the tenants were impacted to some degree while the renovations were ongoing, I find that the evidence does not support the full amount of the monetary claim. I find that the tenants' suggestion for compensation is excessive and unreasonable as the evidence does not support the amount as sought.

While I accept the evidence of the parties that the ongoing construction is accompanied by noise and dust, based on the evidence submitted I find that the level of disturbance is the reasonable level as to be expected from a renovation project. I find that there is insufficient evidence that the nature, duration or level of the disturbance has been at a level that is not reasonable. In addition, the landlord conducted the work without the necessity of displacing tenants or ending tenancies, which in turn resulted in the work taking longer which is completely reasonable to expect under the circumstances. Furthermore, I find that the tenants lack of mitigation to be a consistent pattern throughout the timeline of events.

Residential Tenancy Policy Guideline 16 provides addresses the issue in determining the value of the damage or loss under such circumstances.

I am satisfied that there was a reduction in the value of the tenancy as a result of noise and some limited loss of the balcony. Each party provided a calculation as to what they saw as the appropriate amount however, the parties were at odds on the hours and days that work was being performed, as well as to when the work stopped as a result of "Stop Work" order.

Based on the evidence I find that the loss was not significant, had little impact on the tenants' ability to occupy the rental unit and that the tenants' complaints are unreasonable given the work conducted. I accept that the project has been ongoing for several years but I find that the duration of the project to be a reasonable result of the scope of work and age of the building.

I find that a monetary award of \$2000.00, which is \$100.00 for each month that I find that the evidence shows there, was some impact and reduction in the value of the tenancy as a result of excessive noise and the loss of use of the balcony only; the tenant did not provide sufficient evidence to prove the other items as claimed. As the tenants were partially successful in their application, the tenants are entitled to recovery of the \$100.00 filing fee for this application.

Conclusion

The tenant is entitled to a monetary order of \$2100.00.

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

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: January 23, 2019

Residential Tenancy Branch

DECISION/ORDER AMENDED PURSUANT TO SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON **(Feb 4, 2019)**
AT THE PLACES INDICATED.