



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 tenants' 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;
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant FX appeared on behalf of both tenants with his advocate PM, ("the tenant"). KH, counsel, appeared for the landlord ("the landlord"). Both parties had an opportunity to provide affirmed testimony and submit evidence.

The hearing commenced on December 17, 2018 and continued February 12 and April 23, 2019. At the hearing of February 12, 2019, the parties agreed that neither party would make further oral submissions; further, the parties agreed on the procedure for the submission of the only documentary evidence to be considered by me in my Decision. Further to the agreement and the interim decision filed February 12, 2019, the tenant submitted a documentary evidence package by February 19, 2019 and the landlord submitted a documentary evidence package and written submissions by February 22, 2019; each provided copies to the other party.

At all hearings, the parties acknowledged receipt of the other party's documents. I find each party served by the other in accordance with the *Act*.

The landlord stated in filed materials that the incorrect name of the landlord is provided in prior proceedings and requested the named landlord be changed; accordingly, the name of the landlord is corrected herein pursuant to section 64(3)(c) of the *Act*.

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Issue(s) to be Decided

Is the tenant entitled to the following:

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

Background and Evidence

The parties entered into a residential tenancy agreement beginning on April 1, 2014 and continuing until the tenants vacated in July 31, 2018. The unit was a 1-bedroom apartment on the 8th floor of an apartment building. A copy of the tenancy agreement was submitted as evidence.

The history of the monthly rent paid at the beginning of the month is as follows:

April 1, 2014 - April 1, 2016 - \$1,195.00

April 1, 2016 – April 1, 2017 - \$1,229.65

April 1, 2017 – April 1, 2018 - \$1,326.16

At the beginning of the tenancy, the tenants paid the landlord a security deposit which has been returned to the tenants.

The tenants explained that they have suffered from a diminished enjoyment of the rental property due to large scale, on-going construction in the building and on the surrounding property. The tenants are seeking a monetary order of \$26,605.00 in satisfaction of their claim.

The tenants submitted a 70-page evidence package which included photographs and embedded mp4's replacing a longer evidence package previously submitted. The document outlined the tenants' claim, described the construction period during the tenancy and stated how the situation uniquely affected them. The evidence was assembled to assist all tenants making claims; accordingly, the evidence may be of other floors or units affected by the construction. The tenants testified the photographs and recordings accurately reflect their experiences during the construction. The tenants also submitted information regarding factors unique to their experience.

The landlord's evidence consisted of a package of copies of notices of various dates informing the occupants of the tenant's building of construction activities and a cross-referenced 88-paragraph, 12-page written submission.

I do not reproduce all the parties' evidence here. I refer to only significant, selected, relevant and admissible evidence.

The parties testified that the construction began in the fall of 2015, the tenants having resided in the unit beginning a year earlier. The landlord notified the tenants work would take place over an expected 36 months, including work on common areas, elevators, balconies, and windows/doors. The landlord explained that the landlord was necessarily undertaking the repairs for health and safety reasons and to improve the aging building. Specifically, the landlord testified the balconies needed replacing. In addition, repair plans included replacement of all windows in the building with energy efficient models, and updating of the lobby, hallways, laundry and individual units.

The tenants testified that when the construction started, the male tenant was a university postgraduate student during the tenancy who sometimes worked at home until leaving mid to late afternoon for classes. The female tenant was an accounting professional who worked at home a day a month. In mid-2017, the male tenant began working during regular hours and was from time to time working in another city.

The tenants described many complaints during the period of the construction from the fall of 2015 until they vacated in July of 2018. The significant complaint concerned the noise of construction beginning with the work on the balconies in mid 2016.

The landlord testified that there was no jackhammering or major noise disruptions until mid-June 2016 when work began on the balconies. The tenants did not have use of their balcony until April 2017.

The tenants testified that when the construction began, the "noise was unbearable", that they heard "constant drilling and the sound of jackhammers". The noise often started at 8 AM, and by 9 AM it was "full on" until late afternoon. They could not tell if the noise was coming from the exterior of the building, or from work in the interior. The noise was pervasive, intolerable and physically unendurable. They could not stay at home, much less study or read. For several weeks at this time, the male tenant suffered a broken ankle, was recovering at home, and found it even more difficult to escape the noise during the day.

The landlord replied to the tenants' complaint regarding noise that the landlord lawfully and responsibly carried out the construction during the weekdays only. The landlord made every effort to complete the replacement of the balconies as quickly as possible with minimal interruption and disturbance to the tenants of the building.

The tenants also testified that dust and dirt began to permeate the building and their unit during 2016. They said the common areas, such as the hallways, became dirty and cluttered with debris or construction supplies. The landlord notified the tenants to keep their windows closed. As ventilation was poor, the tenants testified the unit was hot and unpleasant; the landlord only cleaned the windows once during the tenancy.

The landlord responded by testifying to efforts to reduce the inconvenience of construction to the occupants of the building as much as possible. The landlord testified to meeting their obligations of keeping the building clean in accordance with cleaning protocols and employing building managers available to respond to tenants' complaints.

The parties acknowledged that the tenants did not receive mail delivery at the accustomed location for two weeks in February 2017. The tenants described frequent periods without water. The tenants complained that during the construction period, the grounds were unsightly until 2018 with construction debris and supplies. The tenants claimed that during the construction there was a lack of security and that the intercom system failed to work reliably.

The tenants acknowledged they did not make any complaints to the landlord. They testified they were afraid to complain as they had heard stories of the landlord evicting people and housing conditions were such that it was very difficult to find another place to live. The landlords stated that they would have assisted the tenants with respect to their complaints if they had been notified.

Analysis

The tenants submitted a claim for a monetary award for loss of quiet enjoyment pursuant to section 28 of the *Act*. That section provides in part:

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 further 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.

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 landlords.

The parties have testified that the rental building has undergone major renovations and repairs on both the interior and exterior of the building. The work has been ongoing since 2015 and the most significant and disruptive work began in June 2016. The landlord provided testimony that the work is being conducted in a professional manner in accordance with local noise and construction bylaws.

I find that there is sufficient evidence that the construction work has caused an unreasonable disturbance to the tenants. I find the tenants have met the burden of proof on a balance of probabilities that conditions in their unit, specifically noise during the weekday, affected the quality of their life, particularly during the replacement of the balconies from June 2016 to April 2017. In undisputed testimony, the tenants described the scope of the noise and dust they experienced in their apartment. The tenants have also provided evidence to show that the construction has affected them beyond what a reasonable person would expect in the circumstances.

However, I find the amount requested by the tenants to be out of proportion to the loss suffered.

Based on the parties' testimony, I find the rent payable by the tenants as follows:

April 1, 2014 - April 1, 2016 - \$1,195.00

April 1, 2016 – April 1, 2017 - \$1,229.65

April 1, 2017 – April 1, 2018 - \$1,326.16

Based on the evidence, including the extreme level of disturbance described by the tenants and the construction activities described by the landlord from June 2016 – April 2017, I grant the tenants a monetary award of 30% of their rent during this period.

Based on the less severe level of disturbance described by the tenants and the construction activities described by the landlord from May 2017 to August 2018, I grant the tenants a monetary award of 10% of their rent during this period.

Considering the evidence and the testimony, I therefore find the tenants have met the burden of proof on a balance of probabilities with respect to their entitlement to a monetary award for loss of quiet enjoyment in the amount of **\$6,047.09**.

As the tenants have been successful in their application, they are entitled to reimbursement of the filing fee in the amount of \$100.00.

A summary of my award follows:

Period	Reduction in Rent	Amount
June 2016– April 2017 (11 months)	30% (11 months x \$1,229.65 x 30%)	\$4,057.85
May 2017– August 2018 (15 months)	10% (15 months x \$1,326.16 x 10%)	\$1,989.24
Reimbursement filing fee		100.00
	TOTAL	\$6,147.09

I therefore grant the tenants a monetary order in the amount of **\$6,147.09** in compensation of their claim for damages for loss of quiet enjoyment.

Conclusion

The tenants are granted a monetary order in the amount of **\$6,147.09**. This order must be served upon the landlords. This order may be filed in the Supreme Court of British Columbia, Small Claims Division, 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: April 23, 2018

Residential Tenancy Branch