



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BC HOUSING CORPORATION and
[tenant name suppressed to protect privacy]

DECISION

MNDCT OLC PSF RP

Dispute Codes

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for 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 of the *Act*;
- An order for the landlord to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 62; and
- An Order requiring the landlord to carry out repairs pursuant to section 33.

The tenant MN attended. MB and WO, employees of the landlord, attended as agents for the landlord ("the landlord").

The landlord acknowledged service of the Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find that the tenant served the landlord with the Notice of Hearing and Application for Dispute Resolution under section 89 of the *Act*. The tenant acknowledged receipt of the landlord's evidentiary materials.

At the outset, the parties agreed MN was the tenant; the proceedings were accordingly amended to state that the applicant was the tenant MN only.

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 of the *Act*;
- An order for the landlord to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62;
- An order requiring the landlord to provide services or facilities as required by the tenancy agreement or the *Act* pursuant to section 62; and
- An Order requiring the landlord to carry out repairs pursuant to section 33.

Background and Evidence

The tenant's application relates to the loss of quiet enjoyment, a claim for compensation and a request for an order for repairs concerning construction in the apartment building in which the unit is located.

In a 79-minute hearing, the tenant was cautioned several times to stop interrupting the landlord and disrupting the hearing. The tenant yelled repeatedly that the landlord was "lying"; the tenant said the landlord had been trying "to bribe" him. The arbitrator warned the tenant that this behaviour would not be tolerated; his microphone would be disabled

if he continued to disrupt the hearing. When the hearing had been ongoing for 60 minutes (the time allotted for the hearing), the tenant complained about not having enough time to say what he wanted. Accordingly, the hearing was extended an additional 19 minutes to allow the tenant a full opportunity to speak.

The parties agreed on the following. The tenancy agreement began on April 1, 2014 and is ongoing. The tenant rents a 2-bedroom unit on the second floor of an apartment building and pays the landlord rent of \$619.00 monthly at the beginning of the month. The tenant did not pay a security deposit. The landlord submitted a copy of the month-to-month tenancy agreement.

The landlord testified that the building is 55 years old. The building had many structural problems. For example, the balconies were rotting, the building needed a new membrane, bathroom and kitchen fans required replacement, flooring was old, lighting needed improvement, hallways needed renovations, and doors required replacement.

As a result, the building underwent construction which started in January 2019 and is expected to end in July 2019. During this period, the landlord's contractors were required to use various power tools, to tear out parts of the structure, such as the balconies, to erect scaffolding, and to conduct electrical and other work in the common areas and in individual units.

The tenants were notified in the fall of 2018 that substantial updating and repairs of the building would take place from January - July 2019. The planned renovations would significantly improve the tenant's unit: windows, doors, and fans would be upgraded, and the balcony rebuilt.

The tenant described himself as a person with multiple disabilities who is unable to work. He has medical issues with his lungs and his back; as well, he suffers from arthritis. He lives in the unit with his partner and their two children.

The tenant expressed concerns about the proposed construction in an undated 2-page typed letter received by the landlord on October 30, 2018, a copy of which the landlord submitted as evidence. In summary, the tenant stated as follows:

- The tenant had two young children and was worried about their safety, particularly thefts and break-ins that could result from scaffolding being placed on the exterior of the building enabling access the units;

- Rearranging furniture to move it away from the walls was going to be problematic as he had a lot of items, a physical problem with his back and no space to store anything other than his storage unit which was full; he had to discard many children's toys and other items;
- He had "barely any heat" for "3 or 4 winters" and suffered extreme pain from the cold as he had arthritis;
- If toxic substances were going to be removed from the building in construction, the health of his children could be at risk; and
- He had to discard his patio furniture and plants because the patios were going to be torn out and replaced.

During the hearing, the tenant provided testimony that his concerns in the above letter were realized during the subsequent months of construction. His complaints about living in the unit during construction included the following:

- The front door buzzer did not work.
- His bicycles in storage were covered in concrete dust.
- He had to discard his patio furniture and plants.
- He and other residents were not properly protected from possibly dangerous ambient dust.
- He had a lung ailment and suffered from the air quality, and he believed one of his children became sick from the dust.
- There was ongoing, unbearable noise.

The landlord acknowledged the tenants in the building underwent inconvenience from the construction. However, the landlord stated they did everything possible to minimize the disruption and to restore the building to normalcy as quickly as possible. All bylaws were followed, including noise bylaws.

The landlord stated that the construction is almost over; the front door buzzer will be operating within a week.

The landlord acknowledged that the balconies were rotting and needed replacing; hence, every tenant was required to remove all items from the balconies during their removal. The landlord stated there was some space for additional storage during construction and the tenants were informed this was available on a "first come" basis.

The tenant stated his storage unit was full. The tenant denied being informed about this extra space; it was unfair and unreasonable for the landlord to expect him to find

storage space for the items on the patio that had to be moved during the construction. The tenant had no alternative but to discard his patio furniture and some belongings. He claims a monetary award of \$200.00 for the loss of the items on the patio, being primarily patio furniture.

The tenant particularly found the noise from the construction to be disturbing. The scaffolding permitted workers to work immediately outside the tenant's unit. The tenant testified the workers used tools making loud drilling sounds which disrupted his child's meal and nap times; the noise destroyed his family's peace and quiet. The tenant attested to extreme agitation and upset from the noise.

The landlord testified that the tenant created problems with the workers relating to his objections to normal construction noise. In a letter of March 20, 2019 from the landlord's agent MB to the tenant, a copy of which the landlord submitted as evidence, the landlord wrote as follows [in part]:

It has again been brought to our attention that there was another incident between you and the contractors. On March 15, 2019, contractors were installing plywood on your deck. Allegedly, you opened the balcony door and started yelling at them to stop the work, verbally threatening them to the affect of "you will get a hammer to smash his head and kill him".

Only after a discussion with the Regional Manager did you permit them to complete the work.

[Tenant], this is not the first time that you have interfered with the construction work and it is not the first time that you have verbally assaulted the construction crew.

We have had several conversations regarding this type of behavior it is not acceptable, and it will not be tolerated in the future.

The tenant denied this was an accurate accounting of the incident. The tenant acknowledged he asked the worker to stop the noise and called him a "hammer-head". He tenant testified to his belief that his requests were reasonable that the workers stop work in or near his unit when the noise disturbed him or his family. At the hearing, he expressed no regret regarding his alleged behaviour and continued to see his protests as justified.

Because of the tenant's complaints, the landlord testified to making suggestions to the tenant that he apply to move to another building operated by the landlord. The landlord informed the tenant that there were long waiting lists for buildings in more popular parts of the city; 14,000 people in the city were on the waiting list for subsidized housing. The landlord urged him to apply to buildings in the less popular areas. However, the tenant refused to do so and only wanted to live in the highly sought-after areas.

The tenant denied he had been offered any opportunity to apply to live in buildings elsewhere and called the landlord's testimony "a lie".

The tenant stated his complaints to the landlord during the construction were ignored. It was not until he filed an Application for Dispute Resolution that his concerns received any attention.

The landlord denied this was true. The landlord's agent MB testified the tenant had her cell phone number and could call her anytime; he frequently called her, and MB went to his unit several times. There was a full-time property manager on site. A tenant counsellor came to the building one day a week.

As well, the landlord submitted a copy of an email exchange between MD to WO concerning the tenant. The landlord stated that this exchange indicated the tenant's concerns were addressed quickly and to his satisfaction.

The email dated January 22, 2019 stated:

Have you had a chance to talk to the above tenant regarding his claim that patio door lock is not working? We discussed this last week ...

The landlord submitted a copy of the immediate reply from the agent WO to MB as follows [in part and as written]:

For info I have talked to the tenant before I went on vacation. The issue was the broken handle. I told tenant we don't have the parts anymore anyway I told him he will soon get a new patio door later. Since then he never bug me about the door. Today I went in because of outlet problems in the living room and a broken cupboard hinge in the kitchen. There's no problem in the outlets and hinge was repaired.

The Patio door can be open easily by unlocking the door knob located at the bottom. Door can be easily slide though tenant can not go outside because the patio area is boarded up. Please see attached PTE maintenance request. (Dated Jan 8 and 15)

I have asked [landlord's employee] about the new sliding door and the reason it was not installed yet is because they need to finish the deck membrane first. He estimated maybe in 2 weeks time it would be finish.

The landlord submitted a copy of an email dated January 24, 2019 from MB to WO which stated that the patio door was then fixed with salvaged parts (prior to its scheduled replacement) and "the tenant tested it and he was happy about it".

The landlord stated they issued each unit a \$150.00 cheque in March 2019 to thank tenants and as a "token of good will" for putting up with the inconvenience of the construction. The tenant acknowledged receipt of this amount but stated it is inadequate to compensate him for what he went through.

One of the tenant's complaints concerned inadequate heating in his unit for the past several winters. At the hearing, the landlord MB testified that she was unaware that the tenant had any problems with heat. She stated she had been in the tenant's unit several times the construction period. Whenever she was there, she testified the tenant had outside air coming in through openings and that he complained the unit was "stuffy".

During the hearing, the landlord undertook to attend at the tenant's unit within 24 hours to assess the unit's heat and to make certain that any problem was corrected by the emergency maintenance crew within 7 days of the hearing. The tenant stated that his concern about the unit's heating was adequately addressed by the landlord's promise to immediately inspect and remedy any problems.

The tenant requested a monetary award for loss of quiet enjoyment in an unquantified amount and \$200 for loss of his patio furniture. He stated that all other matters had been resolved to his satisfaction.

Analysis

The tenant's claim is 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 January 2019 and is expected to end in July 2019, a duration of seven months. The landlord provided testimony that the work is being conducted in a professional manner in accordance with local noise and construction bylaws.

The landlord testified to efforts made to reduce the impact on the tenants generally and on this tenant specifically. The tenant had cell phone number of a representative of the landlord, so he could call any time. The landlord testified that MB and other staff of the landlord attended many times to the tenant's unit to address his concerns. The building was well staffed with a property manager, maintenance crews, and a tenancy support worker. The tenant was encouraged to apply to live elsewhere.

The emails submitted support the landlord's evidence that the landlord took all reasonable steps to minimize the effect of the construction on the tenant and his family, even by repairing the lock on the patio door in advance of the scheduled replacement of the entire door.

I find that there is insufficient evidence that the construction work has caused an unreasonable disturbance to the tenant. I find the tenant has not met the burden of proof on a balance of probabilities that conditions in his unit affected the quality of his family's life more than could reasonably be expected in work of this nature.

The tenant described the scope of the noise and dust he experienced in their apartment; I find the tenant has not provided evidence to show that the construction has affected him beyond what a reasonable person would expect in the circumstances. I accept the landlord's evidence, supported by the letter to the tenant describing the situation, that the tenant threatened harm to a construction worker. I find the tenant's reaction to be unreasonable, overly sensitive, and irrational.

I find the construction project was intended by the landlord to enhance the quality of life for the tenant by updating the unit and replacing features that were not working or were falling apart. I find the landlord took every reasonable measure to minimize the interference and disturbance upon the tenant.

I find the tenant was given ample warning that the balconies were to be replaced and he had to move the furniture and plants. I prefer the landlord's evidence as being the most credible that the tenants were informed of additional storage space on a 'first come' basis and that the tenant did not apply. I therefore find the tenant has failed to meet the burden of proof on a balance of probabilities that the landlord should reimburse the tenant for any personal belongings and patio furniture.

I find the landlord has undertaken all repairs requested by the tenant.

I therefore dismiss all the tenant's claims without leave to reapply.

Conclusion

The tenant's claims are dismissed without leave to reapply.

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 26, 2019

Residential Tenancy Branch