



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding IMH 350 & 360 Douglas Apartments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on August 4, 2018, (the "Application"). The Tenant applied for an order granting a rent reduction, pursuant to the *Residential Tenancy Act* (the "Act"):

The Tenant and the Tenant's counsel, D.K., attended the hearing. The Landlord's Agent, E.S., as well as the Landlord's counsel, K.H., also attended the hearing at the appointed date and time, and provided affirmed testimony.

The Tenant testified that she served her Application and documentary evidence package to the Landlord by email on January 18, 2019. E.S. confirmed receipt. E.S. stated that she served the Tenant with the Landlord's documentary evidence by email on June 16 and 17, 2019. The Tenant confirmed receipt. Pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to a rent reduction for loss of use and quiet enjoyment of the rental unit, pursuant to Section 65 of the *Act*.

Background and Evidence

The parties agreed that the tenancy began on November 1, 2016. The Tenant currently pays rent in the amount of \$1,019.17 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$472.50, and a pet deposit in the amount of \$472.50.

The Tenant stated that at the time of her taking possession of her rental unit, the building was undergoing some renovations. The Tenant stated that she was told the renovations would continue for a few more months. The Tenant stated that the construction is still not completed to this day, which has resulted in her being negatively impacted as a result. E.S. stated that the construction at the building began in June of 2016 and that the Tenant began her tenancy on November 1, 2016 with full knowledge of the construction taking place at the building.

The Tenant testified that she has had to endure regular construction noise which starts at about 7:00 A.M and sometimes continues until 6:00 P.M. during the week, as well as on weekends occasionally. The Tenant stated that she was a student taking courses online during the first year of her tenancy, which required her to study from home. The Tenant stated that she also had a part time job providing child care and was not able to take the child to the pool as a result of it being closed due to the construction.

The Tenant stated that the noise of drilling was quite intense and that it would shake the entire building. The Tenant stated that she has had to endure internal and external construction noises due to the ongoing renovations at the building, which has impacted her right to quiet enjoyment of her rental unit.

E.S. stated that the Landlord is completing repairs at the building that are necessary to provide and maintain the residential property in a state of decoration and repair that complies with the health and safety requirements. E.S. stated that the construction required to meet this objective was completed in accordance with city bylaws in which construction is permitted between the hours of 7:00 A.M and 7:00 P.M during weekdays as well as 10:00 A.M. and 7:00 P.M on weekends.

The Tenant stated that aside from a brief period between October 2017 to March 2018, she has been unable to use the pool which is included in her tenancy. The Tenant stated that the pool and hot tub were reopened as of July 2018. E.S. stated that the pool was reopened in September 2017 and that there may have been some cleaning required, however, this did not restrict the Tenant's ability to access the pool or hot tub.

The Tenant stated that as a result of the construction, she has had scaffolding obstructing her view outside her window. The Tenant stated that she has been unable to open her window as construction debris and dust would enter her rental unit. The Tenant has also needed to keep her blinds closed to maintain her privacy from the construction workers outside her window.

The Tenant stated that on one occasion in December 2016, she experienced an issue with her heat which she reported to the Landlord. The Tenant stated that it took three days before someone arrived to repair the heater. The Tenant stated that the repair person's attendance was unannounced and without permission. The Tenant also stated that workers would enter her suite while she was away. The Tenant stated that on one occasion, she returned home to find her dog locked in the closet.

The Tenant testified that on December 6, 2017, the Landlord's Agent entered the Tenant's suite unannounced as the Tenant was walking out of her shower. E.S responded by stating that the Landlord's Agent was under the impression that the Tenant had vacated her rental unit after she provided the Landlord with her notice to end tenancy. The Tenant stated that she had withdrawn the notice, after deciding to continue her tenancy.

The Tenant stated that she had security concerns relating to doors being broken or left open in the building to allow access for construction workers. The Tenant stated that she has suffered stress as a result. E.S. stated that there has been no security incidents noted and that doors were left open during daylight hours and that the Tenant has not suffered a loss as a result.

The Tenant stated that hallways in the building were covered in construction debris which entered her unit under her unsealed door. The Tenant stated that she had reported her concern verbally to the onsite building manager. The Tenant stated that the hallways have never been cleaned. E.S testified that the building has a cleaner that attends the building four times per week to clean the common areas including hallways. E.S. stated that the Landlord has yet to receive a complaint from the Tenant regarding the cleanliness of the building.

The Tenant has experienced loss of water during certain periods as a result of the construction. The Tenant acknowledged that she was notified prior to the water being shut off, however, she was impacted as a result. E.S. stated that the water was shut off as it was necessary during certain points of the construction. E.S stated that the residents were notified in advance, and that water would typically be unavailable for four hours, or between 9:00 A.M. to 5:00 P.M. at most.

The Tenant also stated that she was temporarily without postal service while a stop work order was in affect at the building between December 2016 and May 2017. E.S. stated that the postal service was re-routed and that the residents were required to collect their mail at a different location during a two week period. E.S. stated that this was outside of the Landlord's control and that it was a temporary inconvenience to the residents.

The Tenant stated that the Landlord posted notices in common areas updating the Tenants about the work being done; however, the Tenant stated that these notices were inaccurate at times. E.S. stated that the Landlord posted accurate notices in the common areas which kept the residents of the building informed of the progress of construction as well as any interruptions to services which could be anticipated.

The Tenant has also stated that the front lobby of the building has had a hole in the ceiling for about a month, before it was covered up by an unsightly patch of drywall. The Tenant stated that she is embarrassed to invite guests to her rental unit given the past and current condition of the building. E.S stated that there had been a leak which required a hole to be made to ensure

no further water damage would occur. E.S. stated that a temporary piece of drywall has been placed to cover the hole prior to renovations taking place in the lobby.

E.S. stated that the Landlord has not yet received any written complaints from the Tenant. E.S. explained that the building employs a communication portal in which residents can submit complaints and requests to the Landlord which are documented and tracked. E.S. stated that there is no record of the Tenant bringing her concerns forward to the Landlord. The Tenant stated that she expressed her concerns verbally to the onsite building manager, however, she did not provide evidence of these discussions.

E.S. stated that there have been unanticipated delays associated with the renovation; however, the renovation is nearing completion, with only the lobby and laundry room needing to be completed. E.S. stated that the Landlord is currently waiting on a permit to install a wheel chair accessible ramp in the lobby.

The Tenant stated that she is seeking a rent reduction in the amount of \$10,104.33 which she has set out in the following fashion;

Rent Refund 1: 50%

Nov 2016 through Dec 2016 = \$945

- Tenant believes the landlord was not honest in representing renovations on move-in
- Jackhammering and most severe conditions
- No heat for the first month and a half
- Multiple water shut-offs
- Pool/Hot Tub closed
- Multiple invasions of privacy from workers in unit and on scaffolding

Rent Refund 2: 30%

Jan 2017 through Feb 2017 = \$567

- Pool/Hot Tub still closed
- No cleaning/garbage service due to Stop Work Order from WorkSafeBC
- No mail service

Rent Refund 3: 50%

Mar 2017 through Sep 2017 = \$3307.50

- Second period of intense noise disruption from jackhammering and drilling
- Metal constantly being cut in neighbouring apartment
- Still no Pool/Hot Tub/Amenities Room
- Multiple water shut-offs
- Pool/Hot Tub closed

- Multiple invasions of privacy from workers in unit and on scaffolding
- Total loss of view

Rent Refund 4: 35%

Oct 2017 through Jun 2018 = \$3074.16

- Increased interior renovations around tenant's suite
- Intermittent access to Pool/Hot Tub/Amenities Room
- Still having water shut-offs
- Reduced elevator/parking

Rent Refund 5: 20%

Jul 2018 through May 2019 = \$2210.67

- Renovations slowing down
- Intermittent access to Pool/Hot Tub/Amenities Room
- Still noise from interior suite renovations

Analysis

Section 28 of the Act, states that 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*
- (d) *use of common areas for reasonable and lawful purposes, free from significant interference.*

The Residential Tenancy Branch Policy Guideline # 6 Entitlement to Quiet Enjoyment deals with a Tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement. The Guideline provides:

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.

*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.***
[my emphasis]

The Residential Tenancy Branch Policy Guideline #16 Compensation For Damage or Loss addresses the criteria for awarding compensation. The Guideline provides:

Damage or loss is not limited to physical property only, but also includes less tangible impacts such as:

- *Loss of access to any part of the residential property provided under a tenancy agreement;*
- *Loss of a service or facility provided under a tenancy agreement;*
- ***Loss of quiet enjoyment;***
- *Loss of rental income that was to be received under a tenancy agreement and costs associated; and*
- *Damage to a person, including both physical and mental*

[my emphasis]

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.

Section 32(1) of the Act states that 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 the tenant.*

Section 67 of the Act empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the Act, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the Act. Pursuant to Residential Tenancy Policy Guideline #16 an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Tenant to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Landlord. Once that has been established, the Tenant must then provide evidence that can verify the value of the loss or damage. Finally, it must be proven that the Tenant did what was reasonable to minimize the damage or losses that were incurred.

Based on the documentary evidence and oral testimony provided during the hearing and on a balance of probabilities, I make the following findings:

I find that the parties agreed that there has been a significant renovation taking place at the building in which the Tenant occupies a rental unit. The Tenant indicated that she has been impacted from the start of her tenancy until the time of the hearing. I find that the construction was necessary for the Landlord to maintain and renovate the property; however, I find that the ongoing noise and inconvenience resulted in a loss of quiet enjoyment for the Tenant.

The Tenant is claiming for a 50% rent reduction from November 2016 through to December 2016 in the amount of \$945.00.

In her claim she states that the Landlord was not honest in representing renovations on move-in and that she had to endure jackhammering and most severe conditions. The Tenant is also claiming that she had multiple periods in which she had her water shut off as well as no access to the pool or hot tub. The Tenant also stated that her privacy was impacted as a result of unannounced visits by workers as well as scaffolding being placed outside her window.

I find that the Tenant moved into the rental unit with the understanding that renovations were taking place in the building. I accept that the renovation commenced in June of 2016 prior to the Tenant taking possession of the rental unit on November 1, 2016. As such, I find it is reasonable to expect that the Tenant would have noticed that significant renovations were taking place and that she accepted to enter into the tenancy with that understanding. Furthermore, I find it more likely than not that the Tenant was aware that the pool and hot tub would be closed during the renovations.

In her evidence, the Tenant referred to not having heat in her rental for a month and a half. I find that during the hearing, the Tenant referred to the fact that it took the Landlord three days to

send a repair worker to fix the issue. As such, I do not find that the Tenant mitigated her loss by not advising the Landlord sooner about the need for the heat to be repaired.

I accept that the Landlord was required to shut off the water to the building on several occasions; however, I find that the Landlord made reasonable efforts to notify the Tenant about these interruptions to allow the Tenant to make arrangement for water usage around those times.

Lastly, I find that it is reasonable for construction workers to require the use of scaffolding to complete exterior renovations. While the Tenant was unable to maintain her privacy at times, I find that the Tenant provided insufficient evidence that her privacy was being continually impact above and beyond what is reasonable considering the nature of the work being completed to renovate the building. As such, I dismiss this portion of the Tenant's claim without leave to reapply.

The Tenant is claiming for a 30% rent reduction from January 2017 through to February 2017 in the amount of \$567.00.

The Tenant stated that during this time, the Pool and hot tub were still closed; therefore she was not able to use these services. The Tenant also stated that there were no cleaning services at the building, nor was there postal service provided at the building as a result of a stop work order.

In this case, I find that the Tenant would most likely not benefit from the pool and hot tub during these winter months. I further find that the Tenant has provided insufficient evidence to demonstrate a loss relating to the unclean environment that she is claiming. I find that the Landlord has employed a cleaner who attends the building four times per week to clean the common areas. While a certain level of construction debris is to be expected during renovations, I find that the Tenant has provided insufficient evidence to demonstrate that she has suffered a loss as a result, nor has the Tenant provided sufficient evidence that she communicated her concerns to the Landlord in writing.

In relation to the interruption in postal service, I find that the Tenant continued to have service, however, was required to collect her mail at a different location during a two week period. As such, I find that the decision to re-route the mail was not that of the Landlord, therefore it was out of their control. I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord breached the *Act*. In light of the above, I dismiss this portion of the Tenant's claim without leave to reapply.

The Tenant is claiming for a 50% rent reduction from March 2017 through to September 2017 in the amount of \$3,307.50.

The Tenant stated that there was a second period in which she was disrupted by the noise of jackhammering and renovations taking place inside and outside of the building. The Tenant stated that the pool, hot tub, and the amenities room were closed. The Tenant stated her privacy continued to be invaded as well as a loss of view resulting from the scaffolding. Lastly, the Tenant continued to experience a loss of water from time to time due to construction taking place.

In this case, I find that the stop work order was lifted in May of 2017. Therefore I accept that work commenced in May 2017 rather than in March 2017 as being claimed by the Tenant. I do find that the Tenant would not have reasonably been able to expect that the noise of construction as well as loss of the pool and hot tub would continue this late into her tenancy. I find that from May 2017 from when work resumed after the stop work order was lifted, until September 2017 the Tenant is entitled to compensation relating to the lack of amenities which were included in her rent, as well as compensation relating to the ongoing noise and lack of privacy associated with the ongoing renovations.

With consideration to the submissions and evidence from the Landlord and Tenant, I find the Tenant's claim for a 50% rent reduction for a breach of quiet enjoyment is not reasonable. The Tenant has not substantiated a loss of 50% of the monthly rent. I find an award of 20% for loss of quiet enjoyment to be more reasonable based on a claim of this type during the months of May 2017 to September 2017. At the time, the Tenant was paying rent in the amount \$945.00. As such, I find that the Tenant is entitled to monetary compensation in the amount of $(\$189.00 \times 5 = \$945.00)$.

The Tenant is claiming for a 35% rent reduction from October 2017 through to June 2018 in the amount of \$3,074.16 as well as 20% rent reduction from July 2018 through to May 2019 in the amount of \$2,210.67.

The Tenant provided written statements in her evidence that between October 2017 and June 2018, she experienced an increase to the amount of interior renovations around her suite. However, the Tenant did not provide testimony during the hearing as to the loss she suffered as a result, nor did she provided specifics as to which units were being renovated and the proximity of those renovations in relation to her rental unit.

The Tenant stated that she had intermittent pool access during these times, however, she provided no testimony during the hearing as to when the pool was closed again. During the hearing, E.S. stated that the pool and hot tub had been reopened in September of 2017. I find that the Tenant has provided insufficient evidence to demonstrate that the pool and hot tub were not available to her for personal use beyond September 2017.

The Tenant is also claiming that the elevator and parking was an issue, however, I find that the Tenant provided insufficient evidence to demonstrate that she communicated her concerns to the Landlord. During the hearing, the Tenant stated that she had concerns regarding the lack of

security at the building. I find that the Tenant provided insufficient evidence that he suffered any loss related to the security of the building during the construction. I further find that the Tenant provided insufficient evidence to demonstrate that she communicated her concerns to the Landlord. As such, I dismiss this portion of the Tenant's claim without leave to reapply.

I find that the Tenant has established an entitlement to monetary compensation for a loss of use and quiet enjoyment between May 2017 until the end of September 2017, in the amount of \$945.00.

Pursuant to section 67 of the Act, I grant the Tenant a monetary award in the amount of \$945.00 for loss of quiet enjoyment. I order that the Tenant deduct the amount of \$945.00 from one (1) future rent payment.

Conclusion

The Tenant is awarded \$945.00, for loss of use of the pool and hot tub and for a loss of quiet enjoyment. I authorize the Tenant to deduct \$945.00 from one (1) future rent payment.

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: July 12, 2019

Residential Tenancy Branch