



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes: RR, FF

Introduction

This hearing dealt with an application by the tenant, pursuant to the *Residential Tenancy Act*. The tenant applied for a monetary order for compensation for the return of a portion of rent for the period during which the tenant lost the quiet enjoyment of his rental unit. The tenant also applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant represented himself and was accompanied by his advocate. The corporate landlord was represented by counsel.

As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

This matter was initially heard on June 24, 2019 and was adjourned due to lack of enough time to complete the hearing. The parties reconvened on this date and the hearing went on for 153 minutes. Both parties had submitted a considerable amount of written evidence.

I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the tenant entitled to compensation?

Background and Evidence

The tenancy started 18 years ago. The current monthly rent is \$1,120.85. The rental unit is an apartment located on the 12th floor of a 13-storey apartment complex that houses a total of 122 units. The complex was built in the 1960s. In December 2015, the property changed hands and was purchased by an investment company along with 3 other buildings in the neighbourhood.

The landlord submitted a copy of a letter sent to tenants on December 03, 2015 advising them of a change in property management and of upcoming work on the property. The letter states the landlord intends to complete maintenance, repairs and capital work to the property including:

“Corridor, lobby and entrance refurbishment, security upgrades, elevator modernization, painting building envelope, balconies, windows & doors, unit renovations, energy efficient systems and mechanical equipment”

The work is intended to ensure the long term physical and structural integrity of the building(s) and improve the quality and safety of your physical surroundings. The work is expected to take 36 months to complete. As a result, of the proposed construction activity at the property there may be noise, vibration, dust and inconvenience to access and egress at the property; however, we will take steps to minimize inconvenience and will provide status updates as work progresses.” [reproduced as written]

The letter also offers tenants the opportunity to contact the “Site Team” if they require any special accommodation.

In his written submission, the tenant broke his claim down into periods of time which had different rates of rent reductions that he was seeking. Since many of the issues the tenant testified about arose in more than one period, I found it more effective to deal with issues rather than time periods during the tenancy.

1. Noise

The tenant stated that the noise disturbances from jack hammering were unbearable and caused him to have to flee the rental unit and take refuge in his car or elsewhere. The tenant also stated that he works from home arranging music and was unable to do so during the times that the jack hammering was in progress.

The tenant stated that the disturbances impacted his ability to work from home and added that since the outside work involved jack hammering, the tenant was subject to the noise disturbances for the duration of the work on all balconies and not just his own, as the noise traveled through the concrete shell of the building into his rental unit.

The tenant also testified that as suites became vacant, the landlord carried out complete renovations in the suites which included demolition of existing walls and structures. Again, the noise travelled through the concrete building and caused significant disturbances inside the rental unit. The tenant stated that he would use ear plugs which were not sufficient to block out the noise and in addition had to use earphones over the ear plugs. The tenant submitted that the disturbances were relentless and intense.

The landlord agreed that the work was ongoing during the period of December 2015 to March 2019 and that the landlord was simply carrying out maintenance that was required for this complex that was over 50 years old. The landlord stated that the work was carried out during the hours as specified in the local by laws and was done during the hours of 8:00am to 3:30pm.

The tenant replied by stating that the workers would arrive around 7:00am and could be heard conversing with each other.

The landlord stated that the tenants were informed that quieter suites were available upon request and the tenant did not contact the landlord to complain about the noise or request a quieter suite.

2. Mail service

The tenant stated that due to a stop work order, the mail service to the building was stopped for approximately one month and the tenant had to travel to the city to pick up his mail.

3. Lack of security

The tenant stated that during the period the work was ongoing, the doors at the entrance to the building were left propped open. The tenant testified that he feared for his safety as there were unknown people in the hallways and elevators. The tenant agreed that he did not suffer any loss or theft of his property but stated that the unfamiliar faces made him uneasy.

4. Lack of fresh air

The tenant stated that due to the dust and grime that was in the air he had to keep his windows and balcony door shut which interfered with the ventilation of the unit. He submitted that he is in a corner suite and had only half of his windows sealed due to the ongoing construction work but still suffered a loss of airflow and light. The tenant stated that this problem was intensified during summer as the lack of fresh air made the heat unbearable.

5. Dust and grime

The tenant stated that through out the period that the work was ongoing, the rental unit, the hallways and common areas were covered in dust causing him discomfort. The tenant stated that he is asthmatic and contaminants in the air affect his breathing. The tenant stated that in July 2018, he was admitted to the hospital for problems associated with his asthmatic condition.

6. Clutter in the common areas

The tenant stated that construction materials lined the hallways and common areas including the laundry room. The tenant testified that the clutter included tools and trolleys to transport construction material. The tenant stated that the presence of these items in the common areas inconvenienced him.

7. Lack of privacy

The tenant stated that due to the presence of unfamiliar faces in the building over a long period of time, he was in a constant state of caution. Workers would show up inside his balcony or outside his window as they were being hoisted up or being let down. The landlord replied by reminding the tenant that the units were fitted with blinds and window coverings and that he had the option of using them to ensure privacy.

The landlord testified that the tenants were put on notice in December 2015 that the landlord intended to carry out significant repairs and upgrades to the building. The landlord offered the tenants support and the option to move to more suitable and quieter suites. The landlord also informed the tenants that the work would be ongoing for 24 – 36 months. The landlord pointed out that he was exercising his right and responsibility to maintain the premises,

Towards the end of the hearing I suggested that the parties come to an agreement and that I would assist the parties with the creation of the terms of the agreement. The landlord had earlier proposed a settlement of \$6,800.00. During the hearing, the tenant agreed to accept the settlement. At first the landlord's agent agreed to move forward with the settlement but during the conversation regarding settlement, she remembered that the time to accept that offer had run out and stated that she needed to check with the owner of the rental property. The owner was unavailable to call into the hearing by conference call and informed his agent that the offer was no longer available.

Analysis

Section 32 of the Act requires a landlord to maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant. The tenant submits that since January 2016 the construction work has caused ongoing disturbances that have interfered with his right to quiet enjoyment.

Section 28 of the Act states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the Act; use of common areas for reasonable and lawful purposes, free from significant interference. In many respects the covenant of quiet enjoyment is similar to the requirement on the landlord to make the rental units suitable for occupation which warrants that the landlord keep the premises in good repair. For example, failure of the landlord to make suitable repairs could be seen as a breach of the covenant of quiet enjoyment because the continuous breakdown of the building envelop would deteriorate occupant comfort and the long-term condition of the building.

I find there is no evidence before me that the landlord failed to take all reasonable steps to ensure the project would minimize the impact to tenants. I also acknowledge that the landlord understood that the work and its schedule was intensive and required intrusion into individual rental units.

Residential Tenancy Policy Guideline 6 stipulates that "it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises, however a tenant may be entitled to reimbursement for loss of use of a portion of the property even if the landlord has made every effort to minimize disruption to the tenant in making repairs or completing renovations."

In the case before me, I find tenant has provided sufficient evidence to establish that his right to quiet enjoyment has been violated. However, the tenant has provided no reasonable rationale for how he determined the amount of rent reduction he is seeking. Policy Guideline 6 states: "in determining the amount by which the value of the tenancy has been reduced, the arbitrator should take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use the premises, and the length of time over which the situation has existed".

While the tenant submits that his ability to work from home was impacted greatly, I note that the agreement between the parties is for a residential tenancy only and the landlord is not obligated to provide quiet enjoyment for the purposes of the tenant working from home.

I find that a reasonable decrease in the value of the rental unit due to the loss of quiet enjoyment during the renovation period beginning January 2016 and ongoing to substantial completion in March 2019, is 20%. I order that the tenant is entitled a rent reduction of 20% effective the period during which the repair and maintenance work was ongoing. The tenant's monthly rent is \$1,120.85 and therefore a rent reduction for 39 months works out to approximately \$8,742.00. Since the tenant is successful in his application, I award the tenant the recovery of the filing fee of \$100.00.

Overall the tenant has established a claim of \$8,842.00. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order for **\$8,842.00**.

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: September 03, 2019

Residential Tenancy Branch