



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, OLC, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking:

- An order for the Landlord to comply with the *Act*, regulation or tenancy agreement in relation to mutually agreeing to end the tenancy;
- A rent reduction for loss of quiet enjoyment.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord C.M., who also acted as an agent for the remaining respondents not in attendance. All testimony provided was affirmed and the Landlord acknowledged receipt of the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the hearing and the Application.

Preliminary Matters

Preliminary Matter #1

Although the Landlord acknowledged receipt of the Tenant’s documentary evidence by email on approximately May 3, 2020, the Tenant raised concerns regarding receipt of the Landlord’s documentary evidence. The Tenant acknowledged receipt of an email on June 1, 2020, containing two photographs and a copy of an email chain related to a

municipal bylaw, however, they stated that the email received on June 2, 2020, contained many photographs that could not be opened due to their format. In addition to this, they stated that the documents received on June 2, 2020, would have been sent and received outside of the allowable timelines for the submission and service of evidence under the Rules of Procedure.

The Landlord acknowledged that some of the documentary evidence was provided to the Residential Tenancy Branch and served on the Tenant late but stated that this was a result of their difficulty locating their access code. In any event, the Landlord acknowledged that the documentary evidence sent to the Tenant on June 2, 2020, pertains to their own claims for damage to the rental unit and not the Tenant's Application. As only the Tenant's Application was before me for review in the hearing, I therefore excluded the late evidence from the Landlord as it was served outside of the timelines set out in the Rules of Procedure and does not related to the matters I must decide as a result of the Tenant's Application.

Preliminary Matter #2

Both parties had questions relating to the use, retention, and return of the security deposit. As a result, I provided the parties with general information regarding security deposits and the applicable sections of the *Act* and regulation.

Issue(s) to be Decided

Is the Tenant entitled to an order that the tenancy was ended by way of mutual agreement?

Is the Tenant entitled to a rent reduction for loss of quiet enjoyment and other monetary loss?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy agreement in the documentary evidence before me states that rent in the amount of \$3,350.00 is due on the first day of each month and the parties agreed in the hearing that this is correct. The Tenant stated that although the Landlord mutually agreed to end the tenancy as a result of construction noise on the property, and the tenancy ended May 31, 2020 as a result, the Landlord had refused to sign the mutual

agreement to end tenancy form. In the hearing the Landlord acknowledged that they had refused to sign the mutual agreement to end tenancy form provided to them by the Tenant, stating that their signature was optional according to the form, but agreed that the tenancy had ended by way of mutual agreement on May 31, 2020.

The Tenant sought an order confirming that the tenancy had ended by way of mutual agreement and a monetary order for loss of quiet enjoyment due to significant construction noise on the property from March 31, 2020 – early May 2020, as well as other monetary loss. The parties agreed during the hearing that there are four houses located on the property where the Tenant resides, all owned by the Landlord, which are located within very close proximity of one another, and that a major construction project was undertaken by the Landlord on one of these houses from March 31, 2020 – approximately March 9th or 10th, 2020. Although the parties agreed that major construction consisting of demolition to the interior and exterior portions of the upper floor of a house adjacent to the rental unit occurred during this time, they disputed the hours during which the construction occurred, the impact the construction had on the Tenants right to quiet enjoyment of the rental unit, and the appropriate amount for a rent reduction due to the noise from the construction.

The Tenant stated that construction crews were on site between the hours of 7:30-4:00, sometimes later, Monday-Friday and that as construction progressed, they were sometimes there on the weekend as well. The Landlord stated that the construction crew was present from 7:30-3:00 Monday-Friday and was never present on the weekends. The Landlord stated that only they and their ex-spouse were present on site during weekends.

The Tenant stated that they are a consultant and work from home and as a result, the significant ongoing construction noise on the property significantly impacted their ability to work and their quiet enjoyment of the rental unit. The Tenant stated that they selected and rented the rental unit with their work from home requirements in mind and that the Landlord was well aware that they worked from home when they undertook the construction project as they had already lived on the property for 18 months. The Tenant stated that the Landlord was also aware that they shared custody of their children, who resided with them every two . The Tenant stated that during April and May of 2020, their billable hours were reduced by up to 80% due to construction noise, resulting in a loss of approximately \$5,000.00 in billable hours per month. The Tenant stated that although they suffered a significant wage loss of up to 80% each month, they are only seeking monetary compensation in the amount of \$3,350.00, which represents a \$1,675.00 per month rent reduction (50%) as they were still able to reside in and

make sure of the rental unit, despite the very significant noise and the impact to their work.

The Tenant stated that due to the pandemic and the provincial orders in relation to the pandemic, they were unable to find an alternate location to work from, such as a library or coffee shop, and that their children were also home with them for some of this time as schools were closed. The Tenant stated that their children were also unable to focus on school as a result of the noise and had nowhere to go.

The Landlord disputed that the children were home all the time, stating that they often saw them riding their bikes outside. The Landlord also disputed the level of impact the noise had on the Tenant and their ability to work, stating that another occupant of the property was minimally impacted. The Landlord stated that they offered the Tenant a 5% rent reduction, which another occupant of the property gladly accepted, but the Tenant refused, and although they asked the tenant for a counter-offer, none was ever provided. During the hearing the Landlord agreed that the Tenant may be entitled to a rent reduction of between 5-20%, but stated that 50% is unreasonable as they have their own financial obligations for the property and the Tenant still resided in the rental unit. The Landlord also stated that the construction was lawfully permitted and that they were required to complete it or the building permit issued for the property in 2017 would expire, resulting in a need to re-apply and the possible loss of a height variance for the building.

The Tenant also sought \$12.77 for the cost of a land title search for the property as they stated that the Landlord had advised them that ownership of the property was part of a divorce settlement and recovery of the filing fee. The Landlord disputed that the Tenant is entitled to these costs, stating that they attempted to settle this dispute outside of the Branch and that the title search was unnecessary as the Tenant has always dealt with them directly, even when a property management company was involved.

Documentary evidence including but not limited to the tenancy agreement, photographs of the construction, videos of the ongoing construction from inside and outside of the rental unit, copies of correspondence between the parties in relation to the construction, noise and the tenancy, a monetary order worksheet, a land title search, a spreadsheet listing billable work hours for the Tenant, as well as applicable sections of the *Act* and Residential Tenancy Policy Guidelines (the "Policy Guidelines") were before me consideration from the parties.

Analysis

Although the start and end times of the construction crews reported by each party were slightly different, there was general agreement that the construction crews were present on the property Monday-Friday for approximately 7.5-8 hours per day. Although the Tenant stated that they were also present on some weekends, the Landlord disputed this testimony and as the Tenant has not submitted documentary evidence in support of this claim, I am not satisfied that this was the case. As a result, I accept as fact that construction crews were present on the property for at least 7.5 hours per day, Monday-Friday, from May 31st, 2020 – March 9th or 10th, 2020.

Although the Landlord disputed the extent to which the Tenant could have been bothered by the construction noise, their argument was based primarily on the fact that another occupant of the property was minimally disturbed and an assumption that the Tenant was not bothered by other construction ongoing on other properties on the block. However, I have watched four videos submitted by the Tenant, one of which has sound only, regarding construction noise and I find the videos very compelling. The videos were taken inside and outside of the rental unit and on both floors. The videos show that the ongoing construction was extremely close to the rental unit, I would guess less than a few feet away, and significant and sustained construction noise such as sawing, hammering, and drilling could be heard both inside and outside the rental unit and on both floors.

The Landlord did not dispute that the level of noise audible in the videos is accurate or make any arguments that this type of noise was in any way atypical for an average day of construction on the property. They also raised no arguments regarding the proximity of the construction to the rental unit, other than to say that all properties in that area have houses located very close together. As a result, I find that the videos accurately reflect the regular construction noise on the property and the proximity of the construction to the rental unit.

I find the level of noise present in the outside videos to be extremely significant and although the construction noise in the videos is reduced when the Tenant comes inside, I find that the level of noise present inside the rental unit still constitutes an unreasonable level of ongoing disturbance. Although the Landlord argued that the construction was permitted and within the allowable bylaw noise levels, that did not submit any documentation in support of this testimony and it is not my role to determine

whether the level of noise reported by the Tenant complies with municipal bylaws. My role is to determine whether any such noise is so significant or sustained that it constitutes a breach of section 28 of the *Act*.

Section 28 (b) and (d) of the *Act* state that a tenant is entitled to quiet enjoyment including, but not limited to, freedom from unreasonable disturbance and use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline (the “Policy Guideline”) #6 states that a breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the *Act*, and that in determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed. It also states that a tenant may be entitled to compensation for loss even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Although the Landlord argued that other occupants of the property were only minimally impacted by the noise, and therefore the Tenant should only have been minimally impacted, no other occupants of the property attended the hearing in support of the Landlord’s testimony and no documentary evidence was submitted for my consideration by the Landlord to corroborate this claim. Further to this, I find that the degree to which every occupant of the property would be disturbed by noise varies extensively based on their proximity to the noise and their individual circumstances. As a result, I do not give this argument any weight.

Given the level of the noise I find was present during construction, the daily hours in which construction crews were on-site, and the length of the construction project, I find that the construction noise constitutes an unreasonable disturbance to the Tenant in breach of section 28 (b) of the *Act*. I also find that the Tenant’s use of outside areas, such as their balcony, was significantly interfered with by the noise and the ongoing construction in breach of section 28 (d) of the *Act*.

Having made this finding, I will now turn to the amount of compensation sought by the Tenant for the Landlord’s breach of section 28 of the *Act*. As there is no evidence before me the contrary, I accept as fact that the Tenant works from home and suffered a wage loss of up to 80% per month in April and May of 2020, as a result of the ongoing

construction noise. I also accept as fact that neither the Tenant, nor their children, were able to find alternate locations for the completion of work or school, due to the ongoing state of emergency in BC, during the times at which construction noise was occurring on the property. However, as the major construction appears to have completed by May 10, 2020, I find that the Tenant was not as significantly or unreasonably disturbed by construction noise in May of 2020, as they were in April of 2020.

Although the Landlord made some effort to compensate the Tenant for their loss of quiet enjoyment by way of offering a \$150.00 rent reduction, it is clear to me that minimal efforts, if any, were made by the Landlord to actually reduce the amount or duration of construction noise and thereby the impact of this noise on the Tenant's right to quiet enjoyment of the rental unit. This is particularly concerning given that the construction project was undertaken by the Landlord with full knowledge of the tenancy agreements already in place on their property and the working requirements of the Tenant.

I also find that the Tenant made sufficient efforts to mitigate their loss by attempting to negotiate with the Landlord to reduce the daily hours of construction, and thus limit their wage loss and the extend of their loss of quiet enjoyment.

Given the very significant impact I find that the construction noise had on the Tenants ability to work from home, their inability to work from an alternate location due to the state of emergency, the significant impact to their general quiet enjoyment of the rental property, and the impact on their children's ability to complete school work at home during the state of emergency, I am therefore satisfied that the Tenant is entitled to a 50% rent reduction for April 2020, equal to \$1,675.00. However, as the Landlord stated that the major construction ended between May 9, 2020 – May 10, 2020, and the Tenant did not dispute this testimony, I find that the Tenant was not as significantly or unreasonably impacted by any further ongoing construction, such as plumbing, after that date and that they are therefore not entitled to the 50% rent reduction for the entire month of May. As a result, I award them the 50% rent reduction for only the first half of May, in the amount of \$837.50. In total, I find that the Tenant is entitled to \$2,512.50 in rent reductions for April and May of 2020. As the parties agree that only 50% of the rent for May was paid, I find that the Tenant has already received \$1,675.00 worth of rent reductions and is therefore only entitled to monetary compensation in the amount of \$837.50.

Although the Tenant also sought \$12.77 for the cost of a land title search for the property, proof of this payment was not submitted for my review. As a result, I find that

the Tenant has failed to satisfy me that this amount was paid and I therefore dismiss this portion of their claim without leave to reapply.

As the Tenant was successful in the majority of their Application, I also grant them recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. Based on the above, the Tenant is therefore entitled to a Monetary Order in the amount of \$937.50.

Conclusion

I find that the tenancy ended by way of mutual agreement on May 31, 2020.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of **\$937.50**. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord 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: June 8, 2020

Residential Tenancy Branch