Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Devonshire Properties Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation or tenancy agreement, pursuant to section 67.

Both parties attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

Preliminary Issue – Partial Withdrawal of the Application

At the outset of the hearing the tenant advised he is only pursuing a monetary compensation under section 67 of the Act in the amount of $5,500.00.

Therefore, pursuant to my authority under section 64(3)(c) of the Act, I amend the tenant's claim to include only a monetary or for compensation under section 67 of the Act in the amount of $5,500.00.

Issue to be Decided

Is the tenant entitled to a monetary order for compensation for damage or loss?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the tenant's obligation to present the evidence to substantiate his application.

Both parties agreed the tenancy started on February 01, 2020 and ended on May 31, 2020. Monthly rent in the amount of $2,750.00 was due on the first day of the month. The landlord collected a security deposit of $1,375.00 and was authorized to retain it in a previous arbitration decision (the file number is mentioned on the cover page of this decision).

The tenant affirmed there was a loud constant noise in the rental unit above him from early March to March 22, 2020. The tenant contacted the landlord on March 13, 2020 about a noise happening around 3:00 PM on that day: "For the last 45 minutes the scratching and moving of furniture is loud and driving me mad. I will be making a formal complaint with the RTB on Monday if these people don't smarten up".

The landlord replied to the tenant on the same day: "They were advised to buy an area rug. I will suggest to them to buy a furniture feed pad."

The tenant stated the rental unit above him was repaired from March 23 to April 23, 2020. The contractors drilled concrete and the noise level was unbearable from 8:00 AM to 5:00 PM, from Monday to Saturday. The tenant said he did not have his right of quiet enjoyment and lost income as he could not work because of the noise levels during the stay at home pandemic order. The tenant used a headset but could still hear the noise.

The tenant emailed the landlord on March 30, 2020: "Last week was the worst week I ever encounter from the noise part, the drilling and noise was so bad I could not think also I'm self contained so was home for the full time of that." A new email with complaints about the noise levels was sent on April 27, 2020.

The landlord testified the occupied rental unit above the tenant's unit had a water leak issue and it needed to be repaired immediately. The landlord submitted a notice to tenants dated March 20, 2020: "Restoration will be on site to repair the building exterior

and you may hear some construction noise. Start date: March 23, 2020 for approx. 2 weeks barring any unforeseen circumstances. Time: 9:00 AM-5:00 PM."

The landlord said the concrete drilling was from March 23 to April 03, 2020, from 9:00 AM to 5:00 PM, Monday to Friday. After April 03, 2020 the rental unit had the carpet removed and new flooring was installed. The noise level after April 03, 2020 was lower, as the floor installed did not require concrete drilling. The tenant stated the concrete drilling continued until April 23, 2020.

The contractor hired by the landlord for the repairs issued a statement submitted into evidence:

> I confirm that [anonymized] was called to review significant concrete delaminations on the balcony floor of unit [anonymized] that were causing significantly leaking into the unit and damages into the unit. If the concrete spalls were not repaired they would have led to fairly significant structural damage to the concrete slab, interior mould growth, and damage to the floors and walls.
>
> As per our approved quotation, we mobilized on site, and repaired four large delaminating spalling concrete sections, and installed a new cant bead at the joint between the repaired floor and the sliding door curb. The work was done as expeditiously as possible.

The tenant is claiming for a compensation in the amount of $5,500.00 for loss of quiet enjoyment due to the noise disturb from early March to April 23, 2020. A monetary order worksheet was submitted into evidence.

Analysis

Section 7 of the Act states:

> Liability for not complying with this Act or a tenancy agreement
> 7 (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
> (2)A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline 16 sets out the criteria which are to be applied when determining whether compensation for a breach of the Act is due. It states:

> 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. In order to determine whether compensation is due, the arbitrator may determine whether:
>
> - a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
> - loss or damage has resulted from this non-compliance;
> - the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
> - the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 28 of the Act provides that tenants are entitled to quiet enjoyment including the right to freedom from unreasonable disturbance.

Residential Tenancy Branch Policy Guidelines No. 6 discusses the right to compensation for breaching the entitlement to quiet enjoyment:

> **Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to 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.
> In determining whether a breach of quiet enjoyment has occurred, **it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.**
> A landlord can be held responsible for the actions of other tenants if it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.
>
> (emphasis added)

Based on the tenant's testimony and emails dated March 13, 2020, I find that the tenant has not submitted satisfactory evidence to establish that the landlord has breached the

tenant's entitlement to quiet enjoyment of the rental unit from early March to March 22, 2020. The landlord took reasonable measures to address the tenant's complaints by advising the neighbour to buy an area rug to reduce the noise levels.
As the tenant has not proved the landlord failed to comply with the Act, regulation or tenancy agreements, the tenant is not entitled to a monetary compensation for loss of quiet enjoyment from early March to March 22, 2020.

Based on both parties coherent testimony, emails and the contractor statement, I find the landlord needed to conduct immediate repairs in the rental unit above the tenant's unit starting on March 23, 2020 and the necessary repairs caused a constant loud noise from 9:00AM to 5:00PM. The noise lasted at the most one month and on Sundays the noise stopped.

The entitlement to quiet enjoyment does not guarantee a tenant an absolute right to silence in his rental unit. Some noise is unavoidable in a multi-unit dwelling, especially when necessary repairs are conducted. In this matter, I find that the tenant has not provided satisfactory evidence to establish that this disturbance is unreasonable.

Accordingly, I dismiss the tenant's application for compensation for breach of their entitlement to quiet enjoyment due to noise levels.

Conclusion

I dismiss the tenant's application 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: January 15, 2021

Residential Tenancy Branch