Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord attended the hearing and each gave affirmed testimony. The parties were also given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act,* regulation or tenancy agreement, and more specifically for loss of quiet enjoyment, moving expenses and loss of income?

Background and Evidence

The tenant testified that this month-to-month tenancy began about August, 2014 and ended on November 1, 2018. Rent in the amount of $1,050.00 was payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $450.00, all of which has been returned to the tenant. The rental unit is a studio apartment in an apartment building, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that for the months of August to October, 2018 the landlord's breach of providing quiet enjoyment of the rental unit to the tenant was non-stop. The tenant didn't want to move out, but renovations at the apartment building resulted in men and motors outside the window of the rental unit. Tenants were given notice about exterior painting, but motorized equipment started early in the morning and the tenant had to keep windows closed due to non-stop noise from motors and the smell of diesel outside the window. The tenant suffered from migraines and had to go to her car.

The tenant emailed the landlord's agent about the smell and noise, but no one attended to see or hear the noise or smell the diesel fumes.

The tenant is self-employed in the digital marketing field, and the situation started to affect her work, causing decreased ability to excel at work. The tenant was in pain all the time and went to the Dr. who gave a prescription for migraine pills, which helped for a day, but the tenant didn't take them every day. It was difficult to find a place to sleep and stay during the day. The breach was the landlord's failure to attend.

The painting was finished toward the end of October, which was supposed to be a few weeks but lasted a few months. The original notice from the landlord said about 1 month per building, weather permitting. However, the landlord has 2 buildings and the other building is 15 feet away from the tenant's window.

The tenant has provided numerous photographs, videos and emails for this hearing. On September 20, 2018, the tenant sought a discount on rent from the landlord due to the motors of painters and noise from neighbours. The landlord's response states that landlords may complete projects without having to compensate tenants for inconvenience, and that the City allows contractors to start work at 7:30 a.m.

The tenant notified the landlord by email on October 1, 2018 that the tenant would be vacating the rental unit.

The tenant further testified that she would have moved out earlier but was told that it was temporary. Immediately after the painting was finished another motor was placed outside the tenant's window by Telus and drilling occurred. The landlord responded to the tenant's email about it saying that it would take 1 or 2 hours for the technician to install fiber optic cable. Doors were propped open so there was no security during that time. Smoke entered the building and noise from the drilling was excessive. The landlord's email was misleading; a few hours turned into about 2 weeks. The tenant asked the landlord about projects and how long it would last, but the landlord didn't reply.

Power washing then started around the 17th of October, or within that week, and immediately after Telus had been there. Early morning noise began again.

The tenant gave notice and vacated the rental unit.

The tenant claims $450.00 for estimated moving expenses and $1,000.00 for estimated loss of work for 3 months. The tenant testified that she had been making about $3,500.00 per month, however her professionalism was falling apart and within 3 months the tenant lost her highest paying client from the U.S.A. due to missed meetings and eventually lost the contract after 2 years of a good relationship. The tenant was horrified and in a crisis. Sometimes the tenant couldn't get WIFI, and had she known, she would have gone to an office.

The tenant has also provided photographs for this hearing, which she testified were taken between August 7 and all the way up to October 23, 2018.

The tenant has also provided a Monetary Order Worksheet setting out the following claims totaling $4,600.00:

- $1,050.00 for recovery of rent paid for August;
- $1,050.00 for recovery of rent paid for September;
- $1,050.00 for recover of rent paid for October;
- $450.00 for an estimate of moving expenses; and
- $1,000.00 for an estimate of lost work for 3 months.

The landlord's agent testified that the tenant resided in one of the buildings owned by the landlord and worked nights and slept during the day. However, the landlord conducted normal maintenance in both buildings, and gave proper notice of 4 weeks. Each building has 4 sides, and it's ludicrous to say that all of the work was done outside her window. The tenant is not entitled to make a claim due to work done on another building. The landlord addressed and dealt with the tenant's concerns promptly and professionally.

The landlord's agent further testified that notice was given for painting work and the Telus work in the lobby, laundry room and also by email to all 27 units, and the landlord worked with the contractors. Strings of numerous emails have been provided for this hearing, including a notice to all tenants about fibre optics being installed. It is dated October 12, 2018 and it specifies the date that fibre wiring to the exterior of the building would begin, and that each suite would need to be accessed. It also specifies that the work will take about a week and if tenants require privacy, close windows and blinds

because a lift would be used to go around the building. A lift machine was used but didn't run all day; only when moving it. It isn't true that it was all day. Telus drills holes in the side of the building to provide fiber optics to each suite. The tenant is sensitive to noise, but the landlord acted professionally in a timely manner.

The tenant enjoyed her suite for all of the months in question, and there were not people or machines at her window for the full 4 weeks. It's not a high-rise building, and the 2 buildings owned by the landlord has 8 walls; and only about a week on the tenant's side, not for the full 4 weeks. The work took 4 weeks per building. There were no complaints from other tenants.

The landlord ought to be allowed to perform maintenance during business hours, and as a landlord, it's required and they are damned if they do the work and damned if they don't.

SUBMISSIONS OF THE TENANT:
The situation opened the tenant's eyes to the effects of housing instability, and insecurity when a person doesn't have a home – a crisis that impacted the tenant's life in a domino effect. The tenant wants to get justice and it is her hope that tenants will be able to experience justice. The Residential policy says that the tenant has a right to quiet enjoyment, non-prolonged experiences that affect her life. The tenant paid rent for 3 months during the time and her profession and her life was affected by it. The tenant asked the landlord for compensation, which was refused. On September 20, 2018 the tenant asked for a discount on the rent, but the landlord's response was that no compensation is required under the *Act.* The tenant has also provided a written summary for this hearing indicating that other tenants have vacated the rental building due to the on-going noise.

SUBMISSIONS OF THE LANDLORD'S AGENT:
Landlords are entitled to work on buildings for tenants. The tenant's claim of 3 months' rent for damages far exceeds the exterior painting and other work performed. The noise issues are not legitimate; the landlord has to be able to work on buildings without being penalized. The tenant came to the landlord 2 years later. The landlord responded to the tenant's emails and viewed it, but it was not asked at the time. The landlord's agent disagrees that this required any compensation or reduction in rent.

Analysis

In order to be successful in a claim for damage for loss of quiet enjoyment, the tenant must be able to establish that she suffered the loss, and that the loss was suffered as a result of

the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement, and that the tenant did what was reasonable to mitigate any damage or loss suffered.

I have reviewed all of the evidentiary material of the parties, including all photographs, videos and emails, and I consider all of it and the affirmed testimony.

The tenant testified that she suffered damages for loss employment, professionalism and migraines. The tenant also testified that a doctor prescribed medication for migraines, but the tenant didn't continue to take the pills. The tenant also testified that her earnings were about $3,500.00 per month prior to the work performed by the landlord, and that she lost a client. The tenant also testified that she had to leave the rental unit and go to her car or find another place to be in order to escape it.

The landlord's agent testified that the work was on 2 buildings, and the landlord ought to be able to work on 1 building without notifying tenants in another building. Considering the photographs and the tenant's testimony that the landlord owns both buildings and they are 15 feet apart, I disagree with the landlord's agent. The same landlord has the same obligations in both buildings. I do, however agree that not all 8 walls in the 2 buildings were walls of the rental unit or beside the rental unit.

The evidence shows that the tenant sent multiple emails to the landlord about issues with noise, disturbances, silverfish and an agent or employee of the landlord replied very professionally to the tenant. It is also clear that the power-washing, re-painting, and Telus work was far more than a few days, despite the notices from the landlord about how long it would take. The tenant's material indicates that the pressure washing, which commenced the work before painting, started on August 7, 2018, however the emails indicate that the contractor was not available and rescheduled it to the following week. Therefore, I am not satisfied that the tenant has established any loss of quiet enjoyment for the first 2 weeks of August.

I refer to Residential Tenancy Policy Guideline #6 – Entitlement to Quiet Enjoyment, which states, in part:

> 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.
>
> 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.

In this case, having read all of the emails and having viewed all of the videos and photographs, I find that there has been a breach of the entitlement to quiet enjoyment, in that it has affected and has been a substantial interference with the ordinary and lawful enjoyment of the rental unit.

The Policy Guideline also contains a section regarding compensation for damage or loss:

> 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 RTA and section 60 of the MHPTA (see Policy Guideline 16). 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. 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.

In this case, I am not satisfied that the loss of quiet enjoyment was constant enough to award full rent paid for the entire months of August, September and October, 2018. I have also considered the submissions of the landlord's agent that a landlord is required to maintain rental property, and landlords are damned if they do and damned if they don't. However, I also accept the undisputed testimony of the tenant that although an agent of the landlord professionally responded to the tenant's email complaints, no one for the landlord attended the rental unit to hear the noise or smell the diesel.

Having considered the emails exchanged between the parties, and considering that the tenant was able to remain in the rental unit for at least part of the time without interference, I am satisfied that the tenant has established monetary compensation of half of the rent paid for August 15 to October 31, 2018, or $1,312.50.

The tenant also claims moving expenses, which is deemed to be the equivalent of one month's rent payable under the tenancy agreement, which in this case is $1,050.00. The

tenant advised the landlord on more than one occasion that the tenant felt the need to be elsewhere due to the noise, smell of diesel and men outside her window. The tenant also testified that she didn't want to move, but felt she had to due to the landlord's failure to inspect or sufficiently deal with the discomfort. I find that the tenant has established moving expenses as claimed in the amount of $450.00.

The tenant has not provided any evidence to support the testimony that the tenant lost wages equivalent to $1,000.00, and I dismiss that portion of the claim.

In summary, I find that the tenant has established monetary claims of half of the monthly rent from August 15 to October 31, 2018 (2 ½ months x 50%) totaling $1,312.50 and $450.00 moving expenses. Since the tenant has been successful with the application the tenant is also entitled to recovery of the $100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of $1,862.50.

This order is final and binding and may be enforced.

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 14, 2021

Residential Tenancy Branch