



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Westurban Properties Management
Ltd. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes RR, OLC

Introduction

This hearing was convened in response to:

- an application dated December 4, 2020 (the “1st application”) by the Tenant for an order for a rent reduction pursuant to section 54 of the *Residential Tenancy Act* (the “Act”); and
- an application dated January 14, 2021 (the “2nd application”) by the Tenant for an order for the Landlord’s compliance pursuant to section 62 of the Act.

The Landlord did not attend the hearing. I accept the Tenant’s evidence that the Landlord was served with the 1st application for dispute resolution, notice of hearing and evidence by registered mail on December 13, 2020 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Landlord is deemed to have received the 1st application on December 18, 2020.

Section 59(3) of the Act provides that a person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making it, or within a different period specified by the director. As the Tenant did not serve the 2nd Application within the time required, I dismiss this application with leave to reapply.

Issue(s) to be Decided

Is the Tenant entitled to a rent reduction?

Background and Evidence

The tenancy under written agreement started on November 1, 2020. Rent of \$1,025.00 is payable on the first day of each month. At the onset of the tenancy the Tenant was subjected to loud and constant construction noise on the building and the property. The construction equipment was parked, started up and moved back and forth within 2 feet of the Tenants window. The noise occurred daily on weekdays from 7:15 a.m. to 4:30 p.m. until the first week of December 2020. The Tenant was unable to hear television, could not take naps during the day and the constant noise of drilling was a form of torture. The Tenant has no where to go to escape the noise. The Tenant claims a rent reduction of \$275.00 calculated on the basis of the number of hours for the duration of the noise. The Tenant provides a detailed calculation of these hours.

Analysis

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to freedom from unreasonable disturbance. Section 65(1)(f) of the Act provides that if the director finds that a landlord or tenant has not complied with the Act, the regulations or a tenancy agreement, the director may make an order that past or future rent must be reduced by an amount that is equivalent to a reduction in the value of a tenancy agreement. Based on the Tenant's undisputed evidence of significant, ongoing and long-lasting noise for the period of approximately one month I find that the Tenant has substantiated that it's right to quiet enjoyment was breached by the Landlord. Given the hours of this disturbance and considering the Tenant's reasonable calculations, I find that the Tenant is entitled to a rent reduction of **\$275.00** as the loss in the value of the tenancy for the period of the disturbance. The Tenant may deduct this amount from future rents payable in full satisfaction of the claim.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$275.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: March 01, 2021

Residential Tenancy Branch