



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TALO Build - PM
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNDCT, CNL, RR, LRE, LAT, OLC, FFT

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary award for damages and loss pursuant to section 67;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing which lasted approximately 45 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The tenants attended and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the tenants testified that they were not making any recordings.

The tenants gave evidence that they served the landlord with the notice of application and evidence by registered mail sent on March 18, 2021 to the address for service provided on the written tenancy agreement. The tenants submitted a valid Canada Post tracking receipt and confirmation of delivery on March 25, 2021 as evidence of service. Based on the evidence I find that the landlord is deemed served with the tenants' materials on March 30, 2021, five days after mailing, in accordance with sections 88, 89 and 90 of the Act.

At the outset of the hearing the tenants testified that the tenancy has ended as they have vacated the rental unit. The tenants withdrew the portions of their application pertaining to an ongoing tenancy.

Issue(s) to be Decided

Are the tenants entitled to a monetary award as claimed?

Are the tenants entitled to a retroactive reduction in the rent for this tenancy?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

As the landlord did not attend this hearing the tenants provided undisputed evidence regarding the following facts.

This periodic tenancy began on November 9, 2020 and ended May 31, 2021. The monthly rent was \$2,800.00 payable on the first of each month. The rental unit is a detached single-family home consisting of five floors. The rental unit consists of two finished floors on which the tenants primarily resided, two unfinished floors and an attic.

The tenants submit that throughout the course of their tenancy they have not been provided with exclusive use of the rental property or quiet enjoyment of their living space. The tenants gave evidence that the landlord, without the tenants' knowledge or consent, occupied the attic of the rental suite, allowed individuals to access and occupy the unfinished floors and would access the floors on which the tenants and their family primarily resided. The tenants testified that throughout the course of the tenancy they had little security or peace of mind as the landlord and their agents were able to access the rental property and came onto and resided at the property despite the tenancy agreement providing the tenants with the right to exclusive use.

The tenants testified about how the landlord's continued encroachment negatively affected their ability to enjoy the rental unit and the effects the constant incursions have had on the tenants and their children.

The tenants gave evidence that during the tenancy many of the utilities, appliances and services were interrupted or were non-functioning. The tenants provided some representative examples saying that the hot water was not available for the first weeks of the tenancy, the oven not available until nearly a month after the tenancy began, and parking stalls and areas of the unit were made inaccessible by the landlord.

The landlord began various construction work on and about the property from January 2021 through March 2021. The tenants say they believe the construction was undertaken to make the rental property more attractive to prospective purchasers of the property and were not necessary for the upkeep of the property. The tenants submit that the construction work was accompanied by noise, frequent incursions onto the rental property, delivery and storage of items on the rental property and workers who would reside on the rental property.

There were a number of instances where there was hostile confrontation between the workers and tradespeople permitted access to the rental unit and the tenants. The police were called on some occasions. Copies of the synopsis of their attendance by the police were submitted into evidence. The synopsis notes that there was a worker residing in the basement of the rental unit and that municipal bylaw officers and fire inspectors will be contacted regarding the property.

The tenants testified about the negative impact the construction and presence of the landlord's workers had on their daily routines. The tenants explained that they were unable to work, study, relax or have conversations at a reasonable volume due to the noise caused by the landlord's workers. The tenants estimate that there is approximately 60 hours of additional work that they were required to perform to make up the inability to work during the ongoing construction work. The tenants have 3 school age children who were frightened and anxious due to the presence of the workers and the ongoing aggressive interactions they had with the tenants. In addition the tenants and their family members suffered negative health effects due to the noise, dust and debris accompanying the ongoing construction.

The tenants also submit that they were unable to use much of the rental property due to the ongoing construction work and the items left on the property such as a pool that remained uninstalled for several months blocking the use of the front yard.

The tenants submitted into documentary evidence photographs of the ongoing work as well as copies of correspondence with the landlord regarding the disruptions. The landlord's correspondence states at various points;

WE ARE ONLY HAVING THE DRYWALL DELIVERED BECAUSE THE PRICE IS GOING UP 12% AT THE END OF THE MONTH.

Step UP!! Who is representing [the Tenant] here? [The Landlord] has trades waiting on site with NO ACCES TO MY HOME!?!?!?!?!?!?!?????

This is absurd! Who is responsible for this ???? **The costs are mounting----**

The tenants gave evidence that the landlord positioned approximately 6 video cameras to monitor the entrance to the rental unit which they characterize as a violation of their right to privacy.

The tenants seek a monetary award and retroactive reduction of the value of the tenancy due to the conduct of the landlord throughout this tenancy.

Analysis

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the *Act*, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. This provision is also read in conjunction with paragraph 65 (1)(f) of the *Act*, which allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement.

Section 28 of the *Residential Tenancy Act* speaks to a tenant's right to quiet enjoyment, and provides as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;

(c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Residential Tenancy Policy Guideline 6 further discusses quiet enjoyment and provides that:

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 a substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the covenant of 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.

I am satisfied, on a balance of probabilities, that the ongoing construction work performed by the landlord on and about the rental property had significant detrimental impact on the tenants, the value of the tenancy and their ability to have quiet enjoyment of the property. I find that the undisputed testimony of the tenants, supported by their documentary materials to be sufficient to demonstrate that over the course of this tenancy the tenants suffered frequent and ongoing interference and unreasonable disturbance due to the conduct of the landlord and their agents.

I accept the evidence that the tenants were without hot water during the initial weeks of the tenancy and without a working stove for the first month of the tenancy. I further accept that during the course of the tenancy the tenants lost access to various areas of the rental property due to the construction work and the items left on the property. I find that the nature, duration and level of the disturbance caused by the work to be unreasonable and disproportionate to the purposes of the construction. This was not construction that was necessary to maintain the rental property in a state of repair suitable for occupancy.

I further accept the evidence of the tenants that contractors were on the site overnight, residing on the property. I find this to be a level of disturbance that is unreasonable and

beyond what would be expected from any construction work. It is unreasonable that the tenants should endure the presence of others even after the construction work was completed for that day.

I accept the evidence of the tenants that the conduct of the landlord throughout the tenancy and the ongoing work had a profound detrimental effect on them and their young children. I accept that the tenants had to make major adjustments to their lifestyle, that they experienced negative health and mental health effects and were unable to enjoy their home. I further accept that the level and duration of the noise experienced prevented the tenants from performing work duties and that there was a significant negative impact on their ability to occupy the rental unit.

I accept the undisputed evidence of the tenants that the landlord positioned video cameras to record access to the rental unit in violation of the tenants' common law rights and expectation of privacy. It is evident that any surveillance system was not for the purposes of preventing unauthorized entry as the landlord had already provided access to the rental property to various workers and tradespeople who the landlord permitted to reside on the property.

I am satisfied that the tenants have met their evidentiary burden to demonstrate that they have suffered a loss of quiet enjoyment and a loss in the value of the tenancy. Based on the totality of the evidence, I find that this loss was significant in nature and continued for much of the period of this tenancy. While I accept the evidence that the tenants were able to reside in the rental unit for much of the tenancy, I find that this occupancy was fraught and accompanied by fear and anxiety.

Under the circumstances, with the understanding that there were periods when the construction was not occurring or when amenities were made available, I find that a monetary award of \$7,840.00, representing a reduction of 40% of the value of the 7 month tenancy to be appropriate. In accordance with section 65(1)(f) of the Act, I issue a one-time retroactive monetary award in the tenants' favour in that amount to compensate the tenants for the loss in value of their tenancy stemming from the landlord's breaches.

I find that the tenants have demonstrated that the landlord's conduct has caused an ongoing and significant loss of quiet enjoyment. The tenants provided evidence about the inconvenience to their daily routines, the fear they had for their personal safety and the health of their children and the impact the landlord's behaviour has caused. I find it appropriate to issue a one-time monetary award in the tenants' favour in the amount of

\$5,880.00 for loss of quiet enjoyment, the approximately equivalent of 30% of the monthly rent for the period of 7 months of the tenancy.

I find insufficient evidence in support of the portion of the tenant's claim seeking a monetary award for loss of income. While I find that the conduct of the landlord and their agents have had a detrimental effect on the tenants' ability to work and earn income, I find insufficient evidence to demonstrate the hours missed or the hourly earnings the tenant lost. Consequently, I find that I am unable to make a finding of a loss of income beyond what I have issued under the global damages for loss of quiet enjoyment.

As the tenants were successful in their application they are entitled to recover their filing fee from the landlord.

Conclusion

I issue a monetary order in the tenants' favour in the amount of \$13,820.00. 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 17, 2021

Residential Tenancy Branch